

Revisions to  
Massachusetts Contingency Plan  
310 CMR 40.0000

## IMPORTANT NOTE:

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This version is offered as a convenience to our users and DEP believes that the body of the text is a faithful copy of the regulations. **If you REALLY, ABSOLUTELY, MUST know that the version you have is correct and up-to-date, then you must purchase the document through the state bookstore (at <http://www.state.ma.us/sec/spr/spridx.htm>).**

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1. The download may have gone wrong and you may have lost important information,
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The file on this system may be out-of-date (as hard as we try to keep everything current).

### 40.0008: Computation of Time Periods and Deadlines

(1) General. Unless otherwise specifically provided by law, 310 CMR 40.0000 or any order or determination issued pursuant to M.G.L. c. 21E or 310 CMR 40.0000, any time period or deadline prescribed or referred to in 310 CMR 40.0000 or in any order or determination issued pursuant to M.G.L. c. 21E or 310 CMR 40.0000 shall begin with the first day following the act which initiates the running of the time period, and shall include every calendar day, including the last day of the time period so computed. If the last day is a Saturday, Sunday, legal holiday, or any other day on which the offices of the Department are closed, the time period shall run to the end of the next business day.

...

(4) Determining Date of Receipt of Document Submitted to the Department. Except as provided by 310 CMR 40.0008(5), each document required by, or submitted pursuant to, 310 CMR 40.0000 shall be deemed received by the Department as follows:

(a) if served in hand, the document shall be deemed to be received on the date when delivered to the appropriate regional office of the Department (*i.e.* the date stamped received), unless the date stamped is rebutted by production of a receipt from the Department; provided, however, that if the date stamped reflects a date within seven days of the date the submittal is due, the submittal shall be deemed to have been received by the due date;

(b) if given by regular mail, the document shall be deemed to be received when delivered to the appropriate office of the Department (*i.e.* the date stamped received); provided, however, that if the date stamped reflects a date within seven days of the date the submittal is due, the submittal shall be deemed to have been received by the due date; ~~or~~

(c) if given by certified mail, return receipt requested, the document shall be deemed to be received when delivered to the appropriate office of the Department (*i.e.* the date stamped received), unless the date stamped is rebutted by production of the return receipt; provided, however, that if the date stamped reflects a date within seven days of the date the submittal is due, the submittal shall be deemed to have been received by the due date; or

(d) if given by electronic transmission, where the Department provides for submitting the document by such means, the document shall be deemed received on the date the transmission is delivered to the Department, provided that the date of the transmission is within seven days of the date the submittal is due and that a printed copy of the document is submitted to the appropriate office of the Department within fourteen days of the date the submittal is due; if the printed copy of the document is not received by the appropriate office of the Department within fourteen days of the date the submittal is due, then the document will be considered received on the date the printed copy is received. In no case shall the printed copy be submitted to the Department more than fourteen days after the date the electronic transmission is delivered to the Department.

(5) Exceptions.

(a) Adjudicatory Proceedings. Documents required or permitted to be filed under 310 CMR 1.00, Rules for Adjudicatory Proceedings, and 310 CMR 5.00, Administrative Penalty Regulations, shall be filed in accordance with the rules for timely filing set forth therein.

(b) Tier I Permits.

1. The computation of time periods for timely action under 310 CMR 4.04(2) shall be determined in accordance with 310 CMR 40.0720(~~23~~).

2. A Tier I Permit Application shall be deemed received by the Department in accordance with 310 CMR 40.0008(4), provided a copy of the permit application fee remittance is attached to the application and the applicant certifies that the application fee has been mailed, or hand-delivered to the Department, concurrent with

submittal of the application. If a copy of the permit application fee remittance is not attached to the application, or the certification of mailing or hand-delivery is not provided, the application shall be deemed received when the permit application fee is received (i.e. the date posted by the receiving bank).

(c) Interim Deadlines and Notices of Noncompliance. For purposes of determining whether a person has complied with an Interim Deadline or come into compliance with a requirement by the date specified in a Notice of Noncompliance, each document required to be submitted shall be deemed received by the Department as follows:

1. if served in hand, the document shall be deemed to be received on the date when delivered to the appropriate office of the Department (i.e. the date stamped received), unless the date stamped is rebutted by production of a receipt from the Department;
2. if given by regular mail, the document shall be deemed to be received when delivered to the appropriate office of the Department (i.e. the date stamped received); or
3. if given by certified mail, return receipt requested, the document shall be deemed to be received when delivered to the appropriate office of the Department (i.e. the date stamped received), unless the date stamped is rebutted by production of the return receipt.

(d) Presumptive Approval of IRAs ~~and RAMs~~. Each written request for approval of an IRA ~~or RAM~~ shall be given to the Department by certified mail, return receipt requested, or served in hand. Each such submittal shall be deemed received by the Department as follows:

1. if served in hand, the document shall be deemed to be received on the date when delivered to the appropriate office of the Department (i.e. the date stamped received), unless the date stamped is rebutted by production of a receipt from the Department;

~~or~~

2. if given by certified mail, return receipt requested, the document shall be deemed to be received when delivered to the appropriate office of the Department (i.e. the date stamped received), unless the date stamped is rebutted by production of the return receipt; or

3. if given by electronic transmission, the document shall be deemed received on the date the transmission is delivered to the Department, provided the printed copy of the document is delivered to the Department by hand or certified mail on or before the next business day.

(e) Notification of Releases, Threats of Release and Imminent Hazards. Each notification required by 310 CMR 40.0300 shall be given to the Department (i.e. received) as follows:

1. if given orally, the notification shall be deemed to be received on the date and at the time when communicated in person or by telephone;
2. if given in writing and served in hand, the notification shall be deemed to be received on the date when delivered to the appropriate office of the Department (i.e. the date stamped received), unless the date stamped is rebutted by production of a receipt from the Department;

3. if given in writing by regular mail, the notification shall be deemed to be received when delivered to the appropriate office of the Department (*i.e.* the date stamped received); or
4. if given in writing by certified mail, return receipt requested, the document shall be deemed to be received when delivered to the appropriate office of the Department (*i.e.* the date stamped received), unless the date stamped is rebutted by production of the return receipt.

#### 40.0318: Limited Removal Actions

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- (9) In those cases where volumes of contaminated soil encountered unexpectedly exceed initial estimates and the volumetric excavation limits specified in 310 CMR 40.0318(4), persons required to notify under 310 CMR 30.0331 shall notify the Department of the release at the disposal site within the allowable time period for notification, and the person conducting the Limited Removal Action shall either:
  - (a) cease remedial actions; or
  - (b) ~~solicit approval from the Department to~~ continue removal actions at the disposal site as a Release Abatement Measure, as specified in 310 CMR 40.0443.

#### 40.0405: Overview of Preliminary Response Actions

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- (3) Release Abatement Measures
  - (a) Release Abatement Measures are remedial actions that may be voluntarily undertaken by persons conducting response actions at disposal sites. The purposes of Release Abatement Measures are to remediate limited or localized releases, and/or to mitigate the impacts of larger releases until such time as more comprehensive remedial actions can be instituted at the disposal site, in accordance with 310 CMR 40.0800.
  - (b) ~~Release Abatement Measures conducted prior to Tier Classification are subject to presumptive approval by the Department, as described in 310 CMR 40.0443.~~

#### 40.0441: General Provisions for Release Abatement Measures

- (1) Release Abatement Measures are intended to reduce risks at a disposal site and/or increase the cost effectiveness of response actions by allowing the implementation of certain accelerated remedial actions to stabilize, treat, control, minimize or eliminate releases until such time as a Response Action Outcome is achieved, as described in 310 CMR 40.1000, or until Comprehensive Remedial Actions can be implemented, as described in 310 CMR 40.0800.

(2) Release Abatement Measures shall be limited in scope and complexity, as described in 310 CMR 40.0442, in order to prevent adverse impacts to health, safety, public welfare or the environment that could result from the implementation of complicated or large-scale remedial actions at disposal sites where there has not been adequate assessment, evaluation, planning and/or public involvement.

~~(3) Notwithstanding the provisions of 310 CMR 40.0443(2) and 40.0443(3), Release Abatement Measures shall not be conducted at any disposal site or portion of a disposal site where an Immediate Response Action is required or ongoing, as described in 310 CMR 40.0410, until such time as written approval to conduct the Release Abatement Measure is obtained from the Department.~~

~~(43) Except as specified in 310 CMR 40.0441(3),~~ an RP, PRP or Other Person may ~~propose to the Department to~~ conduct a Release Abatement Measure at a disposal site at any time following notification to the Department of a release or threat of release pursuant to 310 CMR 40.0300.

(54) Any person who conducts a Release Abatement Measure shall do so in accordance with all applicable requirements and specifications prescribed in 310 CMR 40.0000. RPs, PRPs, and Other Persons conducting Release Abatement Measures shall employ or engage a Licensed Site Professional as required by these regulations.

(65) Release Abatement Measures shall comply with all local, state and federal permitting and approval requirements.

(76) Health and safety procedures consistent with the provisions of 310 CMR 40.0018 shall be implemented at all sites where a Release Abatement Measure is being conducted.

#### 40.0443: Approvals Required to Conduct Release Abatement Measures

(1) ~~Except as provided in 310 CMR 40.0443(4), a~~ Release Abatement Measure shall not be conducted at any disposal site until a complete Release Abatement Measure Plan, as described in 310 CMR 40.0444, has been received by the Department. A ~~complete~~ Release Abatement Measure Plan shall not be considered complete until ~~the Release Abatement Measure Plan containing~~ all information described in 310 CMR 40.0444 is received in the appropriate DEP regional office, accompanied by a photocopy of the check mailed to the appropriate address, in cases where a fee is specified pursuant to 310 CMR 4.00.

~~(2) Except as provided by 310 CMR 40.0441(3), prior to Tier Classification of a disposal site, a Release Abatement Measure shall not be conducted until:~~

~~(a) the Department has issued written approval of the Release Abatement Measure Plan, or~~

~~(b) the Department has failed to issue written approval or denial of the Release Abatement Measure Plan within 21 days of receiving the same, in which case approval shall be presumed.~~

~~(23) Except as provided by 310 CMR 40.0441(3), subsequent to providing the Department with a Tier Classification Submittal for a disposal site pursuant to 310 CMR 40.0500, Subsequent to the receipt by the Department of a complete RAM Plan, unless otherwise specified by the Department in writing, approval shall not be required from the Department to conduct the a Release Abatement Measure, except for Tier IA disposal sites.~~ Exemption from the need to obtain approval from the Department in these cases shall not relieve RPs, PRPs, or Other Persons of their obligation to submit to the Department all required Release Abatement Measure Plans, Status Reports and Completion Reports.

~~(4) Notwithstanding the provisions of 310 CMR 40.0443(1) through (3), the Department may orally approve a Release Abatement Measure proposed by an RP, PRP or Other Person as a continuation of a Limited Removal Action initiated in conformance with the provisions of 310 CMR 40.0318. In determining whether to grant or deny such approval, the Department shall consider:~~

- ~~(a) the nature and scope of proposed remedial actions;~~
- ~~(b) the types and amounts of oil and/or hazardous material present at the disposal site;~~
- ~~(c) the degree to which the RP, PRP or Other Person conducting response actions properly planned and executed the Limited Removal Action;~~
- ~~(d) the proposed disposition of excavated Remediation Waste; and~~
- ~~(e) any other relevant factors.~~

~~(5) Persons receiving oral approval pursuant to 310 CMR 40.0443(4) shall submit to the Department within 60 days thereafter:~~

- ~~(a) a Release Notification Form, as described in 310 CMR 40.0371; and~~
- ~~(b) either a complete Release Abatement Measure Plan, as described in 310 CMR 40.0444, a Release Abatement Measure Completion Report, as described in 310 CMR 40.0446, or a Response Action Outcome Statement, as described in 310 CMR 40.1000. Any such submission shall be accompanied by the Release Abatement Measure fee and the Response Action Outcome Statement fee, if applicable, and as specified in 310 CMR 4.00.~~

~~(63) Any person implementing a Release Abatement Measure shall conform to all proposals and specifications contained in the Release Abatement Measure Plan, and any approval conditions specified by the Department, whether written or oral.~~

(4) A modified Release Abatement Measure Plan shall be submitted to the Department prior to implementing a modification of a Release Abatement Measure if:

- (a) contaminants or conditions are discovered that significantly increase the degree or change the type of exposure to nearby receptors; or
- (b) a significant change is proposed to on-site treatment processes.

All other modifications may be implemented immediately and shall be documented with the next required response action submittal pursuant to 310 CMR 40.0440.

(75) Remedial actions specified in a Release Abatement Measure Plan shall be initiated by the RP, PRP, or Other Person conducting response actions at a disposal site:

- ~~(a) within one year of receiving written approval from the Department of the Release Abatement Measure Plan;~~
- ~~(b) within one year from the date approval of the Release Abatement Measure Plan was presumed pursuant to 310 CMR 40.0443(2)(a); or~~
- ~~(c) within one year from the date of submittal the Department's receipt of a complete Release Abatement Measure Plan, whichever date is later.~~ Release Abatement Measure Plans not initiated in this manner shall be considered invalid and unapproved.



## **PERMIT REDESIGN**

### **SUBPART E: TIER CLASSIFICATION AND RESPONSE ACTION DEADLINES**

- 40.0500: Tier Classification and Response Action Deadlines
- 40.0501: Scope and Applicability
- 40.0502: Tier ID Disposal Sites
- 40.0510: Tier Classification Process
- 40.0520: Basis for Tier Classification
- 40.0530: Reclassification by RPs, PRPs or Other Persons~~-scoring~~ dduring Response Actions
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- 40.0583: Department Reclassification of a Tier ~~IA~~Classified Disposal Site
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### **SUBPART E: TIER CLASSIFICATION AND RESPONSE ACTION DEADLINES**

#### **40.0500: Tier Classification and Response Action Deadlines**

The regulations published at 310 CMR 40.0500 through 40.0599, cited collectively as 310 CMR 40.0500, establish requirements and procedures for the rendering of LSP Tier Classification Opinions, and deadlines for completing response actions at disposal sites. LSP Tier Classification Opinions are considered by the Department in determining the appropriate level of Departmental oversight for response actions conducted by RPs, PRPs and Other Persons at disposal sites.

#### **40.0501: Scope and Applicability**

(1) 310 CMR 40.0500 establishes requirements and procedures for the performance of response actions at Tier I disposal sites, including, but not limited to, requirements for re-scoring such disposal sites and submittal requirements. For Tier I disposal sites, the specific deadlines for RPs, PRPs and Other Persons to achieve a Response Action Outcome pursuant to 310 CMR 40.1000 are determined in accordance with 310 CMR 40.0550

and any other applicable deadlines established in a Tier I Permit issued pursuant to 310 CMR 40.0700.

(2) 310 CMR 40.0500 also establishes requirements and procedures for the performance of response actions at Tier II disposal sites, including, but not limited to, requirements for re-scoring such disposal sites and submittal requirements. For Tier II disposal sites, the specific deadlines for RPs, PRPs and Other Persons to achieve a Response Action Outcome are determined in accordance with 310 CMR 40.0560.

(3) Except as provided in 310 CMR 40.0501(4) ~~or 310 CMR 40.0501(8)~~, all sites for which the Department receives notification of a release or threat of release of oil and/or hazardous material pursuant to 310 CMR 40.0300 on or after October 1, 1993, or has discovered or discovers that a release or threat of release of oil and/or hazardous material has occurred, shall be classified by RPs, PRPs or Other Persons as either a Tier I or Tier II disposal site in accordance with 310 CMR 40.0500. An RP, PRP or Other Person shall submit a Tier Classification Submittal and, if applicable, a Tier I Permit application, ~~shall be submitted~~ to the Department by the following deadlines:

(a) within one year of the earliest date computed in accordance with 310 CMR 40.0404(3); or

(b) as otherwise specified by the Department in an Interim Deadline pursuant to 310 CMR 40.0167 or order pertaining to such release or threat of release. In the event that multiple deadlines for Tier Classification would be established by 310 CMR 40.0501(3) with respect to any specific disposal site, the earliest of the applicable deadlines shall apply for the purposes of Tier Classification.

(4) Notwithstanding any provision of 310 CMR 40.0501(3) ~~or 310 CMR 40.0501(8)~~ to the contrary, an RP, PRP or Other Person conducting response actions at a disposal site shall not be required to submit a Tier Classification Submittal, and, if applicable, a Tier I Permit Application, if such RP, PRP or Other Person submits either shall not be required for any disposal site for which a Response Action Outcome Statement pursuant to 310 CMR 40.1000 or a Downgradient Property Status Submittal pursuant to 310 CMR 40.0180 ~~is submitted~~ to the Department within one year of the earliest date computed in accordance with 310 CMR 40.0404(3).

(5) Any person undertaking response actions at a Location To Be Investigated, unclassified disposal site, or non-priority disposal site without a Waiver listed in the 1993 Transition List, or any addendum thereto, shall submit to the Department a Tier Classification Submittal by the applicable deadline established by the Transition Provisions, 310 CMR 40.0600.

(6) An individual Tier Classification Submittal may be for a single discrete disposal site located on one or more parcels of land or to address multiple discrete disposal sites located on a single parcel of land.

(7) An RP, PRP or Other Person may undertake Phase II and Phase III Comprehensive Response Actions pursuant to 310 CMR 40.0800 prior to Tier Classification without the Department's prior approval, unless otherwise prohibited by the Department.

~~(8) The deadline for submittal of a Tier Classification Submittal or a Response Action Outcome Statement established by 310 CMR 40.0500 shall be extended to the date that is 90 days after the effective date of the first revision to the definition of the term "Potentially Productive Aquifer" in 310 CMR 40.0006 and to 310 CMR 40.0932(5)(b) promulgated after December 15, 1995, provided that the following conditions are met:~~

~~(a) Such deadline shall be extended where:~~

~~1. The groundwater at such disposal site is defined as Category GW-1 solely because it is within a Potentially Productive Aquifer pursuant to 310 CMR 40.0932(4)(b); and/or~~

~~2. The soil at such disposal site lies above groundwater which is defined as GW-1 solely because the groundwater is within a Potentially Productive Aquifer, pursuant to 310 CMR 40.0932(4)(b).~~

~~(b) To extend a deadline based on the conditions of 310 CMR 40.0501(8), the RP, PRP or Other Person subject to the deadline shall submit a written statement to the Department on or before such deadline, indicating his or her intention to submit a Tier Classification Submittal or Response Action Outcome Statement (as appropriate) by the extended deadline.~~

#### 40.0502: Tier ID Disposal Sites

(1) A disposal site shall be deemed a Tier ID ("default") disposal site if any of the following apply:

(a) an RP, PRP or Other Person for such disposal site fails to submit to the Department one of the following by the applicable deadline in 310 CMR 40.0501:

1. a Response Action Outcome Statement; or

2. a Tier Classification Submittal and, if applicable, a Tier I Permit Application;

(b) such disposal site had been categorically classified as Tier IB before June 27, 2003 pursuant to 310 CMR 40.0600 or as a result of the failure of an RP, PRP, or Other Person to submit one of the following by the applicable deadline:

1. a Response Action Outcome Statement;

2. a Tier Classification Submittal, and, if applicable, a Tier I Permit Application; or

(c) the person undertaking response actions is in noncompliance with M.G.L. c. 21E, 310 CMR 40.0000 or any other applicable requirement and the Department reclassifies the disposal site a Tier ID disposal site pursuant to 310 CMR 40.0583.

(2) An RP, PRP or Other Person shall not conduct Comprehensive Response Actions pursuant to 310 CMR 40.0800 at a Tier ID disposal site.

(3) An RP, PRP or Other Person for any disposal site that was not previously classified and is deemed a Tier ID disposal site pursuant to 310 CMR 40.0502(1)(a) or (b) shall Tier Classify such disposal site pursuant to the requirements at 310 CMR 40.0510.

(4) Any disposal site deemed Tier ID by the Department pursuant to 310 CMR 40.0502(c) shall be reclassified as follows:

(a) if the disposal site was previously classified pursuant to 310 CMR 40.0510, then the previous classification shall be effective when the Department determines that the RP, PRP, or Other Person has addressed the non-compliance, provided such classification has not expired;

(b) if the disposal site was not previously classified, then the RP, PRP, or Other Person shall classify the disposal site pursuant to 310 CMR 40.0510 when the Department determines that the RP, PRP, or Other Person has addressed the non-compliance.

(5) Notwithstanding 310 CMR 40.0502(1)(b), for the purpose of assessing annual compliance assurance fees in accordance with 310 CMR 4.00 for billable years prior to June 27, 2003, each disposal site for which the Department does not receive a Response Action Outcome Statement, or a Tier Classification Submittal, and, if applicable, an application for a Tier I Permit by the applicable deadline for Tier Classification shall be categorically classified as a Tier IB disposal site on the date of the applicable deadline if such deadline is prior to June 27, 2003.

#### 40.0510: Tier Classification Process

(1) The Tier Classification process consists of:

(a) the completion of a Phase I Report in accordance with 310 CMR 40.0480;

(b) the completion of a Numerical Ranking System Scoresheet in accordance with 310 CMR 40.1500;

(c) a comparison of conditions at a disposal site with the Tier I Inclusionary Criteria set forth in 310 CMR 40.0520(2);

(d) the preparation and filing with the Department of a ~~Phase II Scope of Work completed in accordance with 310 CMR 40.0834 for all Tier I~~

~~and Tier II disposal sites~~ Tier Classification Submittal in accordance with 310 CMR 40.0510(2); and

~~(e) the preparation and filing with the Department of one of the following for all Tier I or Tier II disposal sites:~~

~~1. a Phase II Scope of Work completed in accordance with 310 CMR 40.0834; or~~

~~2. a Conceptual Scope of Work which, at a minimum, includes a general plan for assessing contaminants of concern, potential receptors and potential exposure pathways, identifying the likely technical approach(es) to be used, estimating an overall schedule or timeline, including interim milestones and estimating overall cost.~~

~~(e) the public involvement activities relevant to Tier Classification, including, but not limited to, those activities set forth in 310 CMR 40.1403(3) and 40.1403(6). Response actions may be initiated or continued at the disposal site during the comment period described in 310 CMR 40.1403(6)(a), unless otherwise prohibited by the Department.~~

(2) A Tier I or Tier II Classification Submittal shall consist of the following:

(a) a completed Tier Classification transmittal form using the form established by the Department for such purposes;

(b) an LSP Tier Classification Opinion;

(c) the certification required by 310 CMR 40.0009;

(d) the certification required by 310 CMR 40.0540(1) for a Tier II disposal site; such certification shall be provided in a Permit Application pursuant to 310 CMR 40.0703(9) for a Tier I disposal site; ~~and~~

(e) the compliance history required by 310 CMR 40.0540(2) for a Tier II disposal site; such compliance history shall be provided in a Permit Application pursuant to 310 CMR 40.0703(9) for a Tier I disposal site;

~~and~~

~~(f) one of the following:~~

~~1. a Phase II Scope of Work completed in accordance with 310 CMR 40.0834; or~~

~~2. a Conceptual Scope of Work that, at a minimum, includes:~~

~~a. a general plan for assessing contaminants of concern, potential receptors and potential exposure pathways, identifying the likely technical approach(es) to be used;~~

~~b. a projected schedule that includes interim milestones; and~~

~~c. an estimate of the cost.~~

(3) An LSP Tier Classification Opinion shall consist of:

(a) a completed Phase I Report, as described in 310 CMR 40.0480;

(b) a Numerical Ranking System (NRS) Scoresheet completed in accordance with 310 CMR 40.1500;

(c) on the basis of the Tier I Inclusionary Criteria or the score a disposal site receives using the Numerical Ranking System, an LSP Opinion as to whether a disposal site should be classified by the Department as Tier I or Tier II; and if such LSP Opinion indicates that a disposal site should

be classified by the Department as Tier I, an LSP Opinion as to whether such disposal site should be categorized as Tier IA, Tier IB or Tier IC for the purposes of permitting pursuant to 310 CMR 40.0700; and

(d) any other information required by 310 CMR 40.0520 or 40.0530, including, but not limited to, any other Phase Reports, Status Reports and Completion Statements material to the LSP Tier Classification Opinion.

(4) In the event that an LSP Tier Classification Opinion indicates that, on the basis of the Tier I Inclusionary Criteria or the disposal site's NRS score, a disposal site should be classified as Tier I, the person submitting the Tier Classification Submittal shall include therein a completed application for a Tier I Permit in accordance with 310 CMR 40.0700.

~~(5) For the purposes of 310 CMR 40.0500,~~

~~(a) the effective date of a Tier I Classification shall be the effective date of a Tier I Permit issued pursuant to 310 CMR 40.0700; and~~

~~(b) the effective date of a Tier II Classification shall be the date a Tier II Classification Submittal is received by the Department or, when downgrading a Tier I disposal site through a Major Permit Modification, the date the Department approves the Major Permit Modification application is approved pursuant to 310 CMR 40.0720.~~

(5) Unless otherwise specified by the Department, the Tier Classification effective date shall be the date a complete Tier Classification Submittal is received by the Department. Such Tier Classification shall apply unless and until the RP, PRP or Other Person submits a revised NRS Scoresheet and Tier Classification to the Department pursuant to 310 CMR 40.0530 that reclassifies the disposal site or the Department reclassifies the disposal site pursuant to 310 CMR 40.0583.

(6) Reclassification of a disposal site does not change the effective date of the Tier Classification.

#### 40.0520: Basis for Tier Classification

(1) Disposal Site Scoring.

(a) Any person performing Tier Classification for a disposal site shall score such disposal site using the Numerical Ranking System described in 310 CMR 40.1500. The disposal site score shall be based upon data, facts and other information obtained during Phase I, and any other relevant data, facts or information known by the person performing Tier Classification, including, but not limited to, any data, facts or information obtained during a Phase II - Comprehensive Site Assessment, if Phase II work has been performed at such disposal site.

(b) All relevant data, facts and other information considered during Tier Classification shall be documented in the applicable Phase Report(s)

and the LSP Tier Classification Opinion. LSPs shall use the Response Action Performance Standard in 310 CMR 40.0191 to develop an LSP Tier Classification Opinion.

(c) Any person performing Tier Classification may account for risk reduction measures, if any, that have been completed at the disposal site pursuant to 310 CMR 40.0400 prior to performing such Tier Classification, including Immediate Response Actions, Release Abatement Measures and Utility-related Abatement Measures.

(2) Tier I Inclusionary Criteria.

(a) Any disposal site which meets any of the following criteria shall be categorically classified as Tier I, regardless of the score such disposal site receives using the Numerical Ranking System:

1. any disposal site at which:
  - a. there is evidence of groundwater contamination with oil and/or hazardous material at concentrations equal to or exceeding the applicable RCGW-1 Reportable Concentration set forth in 310 CMR 40.0360 at the time of Tier Classification, and
  - b. such groundwater is located within an Interim Wellhead Protection Area or Zone II; or
2. any disposal site at which an Imminent Hazard is present at the time of Tier Classification.

(b) Any disposal site that is classified as Tier I only because such disposal site meets the criteria set forth in 310 CMR 40.0520(2)(a)2. may be reclassified as Tier II ~~upon the Department's determination, pursuant to 310 CMR 40.0426, that an~~ pursuant to 310 CMR 40.0530 once the Imminent Hazard is no longer present at the disposal site. ~~Such reclassification shall be conducted as follows:~~

- ~~1. if the Department has issued a Tier I Permit for the disposal site, by re-scoring pursuant to 310 CMR 40.0530, and submitting an application for a Major Modification of a Tier I Permit in accordance with 310 CMR 40.0707; or~~
- ~~2. if an application for a Tier I Permit is pending, by withdrawing that application and submitting a revised Tier Classification Submittal pursuant to 310 CMR 40.0500.~~

(c) For the purpose of assessing annual compliance assurance fees in accordance with 310 CMR 4.00 for billable years prior to June 27, 2003, ~~Each~~ disposal site for which the Department does not receive one of the following by the applicable deadline for Tier Classification shall be categorically classified as a Tier IB disposal site on the date of the applicable deadline if such deadline is prior to June 27, 2003.:

1. a Response Action Outcome Statement, or
2. a Tier Classification Submittal, and, if applicable, an application for a Tier I Permit.

~~(d) The Department may deem any disposal site at which the person undertaking response actions is in noncompliance with M.G.L. c. 21E,~~



~~310 CMR 40.0000 or any other applicable requirement to be a Tier IB disposal site.~~

~~(e) Any disposal site that is classified as Tier IB pursuant to 310 CMR 40.0520(2)(c) may be reclassified pursuant to 310 CMR 40.0510.~~

~~(f) Any disposal site that is deemed Tier IB pursuant to 310 CMR 40.0520(2)(d) may be reclassified as follows:~~

~~1. if the disposal site was previously classified, the previous classification shall resume when the person undertaking response actions comes into compliance with the requirements violated; or~~

~~2. if the disposal site was not previously classified, the disposal site may be reclassified when the person undertaking response actions comes into compliance with the requirements violated and meets the requirements in 310 CMR 40.0510.~~

~~(gd)~~ Each disposal site for which the deadline for Tier Classification pursuant to 310 CMR 40.0501(3) is prior to February 1, 1995, and for which the Department has not received a Tier Classification Submittal or a Response Action Outcome Statement by February 24, 1995, shall be categorically classified as Tier IB, effective February 24, 1995.

(3) NRS Cut-off Scores. The score a disposal site receives using the Numerical Ranking System shall serve as the basis for the LSP Tier Classification Opinion as follows:

~~(a) any disposal site receiving a total score equal to or greater than 350 shall be considered Tier I;~~

(a) any disposal site receiving a total score equal to or greater than 550 shall be considered Tier IA;

(b) any disposal site receiving a total score less than 550 and equal to or greater than 450 shall be considered Tier IB;

(c) any disposal site receiving a total score less than 450 and equal to or greater than 350 shall be considered Tier IC; and

~~(bd)~~ any disposal site receiving a total score of less than 350 shall be considered Tier II, unless such disposal site meets any of the Tier I Inclusionary Criteria specified in 310 CMR 40.0520(2)(a), in which case the disposal site

~~(c) any disposal site receiving a total score equal to or greater than 550 shall be considered Tier IA;~~

~~(d) any disposal site receiving a total score less than 550 and equal to or greater than 450 shall be considered Tier IB;~~

~~(e) any disposal site receiving a total score less than 450 and equal to or greater than 350 shall be considered Tier IC; and~~

~~(fe) any disposal site receiving a total score less than 350 and that meets any of the Tier I Inclusionary Criteria specified in 310 CMR 40.0520(2)(a) shall be considered Tier IC.~~

40.0530: Reclassification by RPs, PRPs, or Other Persons ~~seeing~~ During Response Actions



(1) An RP, PRP or Other Person ~~y-person~~ performing response actions at a disposal site following Tier Classification shall re-~~evaluate-score~~ such disposal site using the Numerical Ranking System and the Tier I Inclusionary Criteria specified in 310 CMR 40.0520(2)(a)1. if he or she obtains new or additional data, facts or other information which is reasonably likely to result in a ~~score~~finding that ~~which~~ would cause reclassification of the disposal site from Tier II to Tier I, from Tier IC to Tier IA or Tier IB, or, from Tier IB to Tier IA.

(2) An RP, PRP or Other Person ~~y-person~~ performing response actions at a Tier II disposal site that receives a total score equal to or greater than 350 ~~or meets the Tier I Inclusionary Criteria~~ upon re-~~evaluating the disposal site~~ ~~scoring~~ shall submit to the Department a Tier Classification Submittal and an application for a Tier I Permit in accordance with 310 CMR 40.0700 within 60 days of obtaining knowledge of such score.

(3) An RP, PRP or Other Person ~~y-person~~ performing response actions at a Tier IC disposal site that receives a total score equal to or greater than 450 upon re-~~evaluating the disposal site~~ ~~scoring~~ shall submit an application to the Department for a Major Modification of a Tier I Permit in accordance with 310 CMR 40.0707 to upgrade the permit category to Tier IB or Tier IA within 60 days of obtaining knowledge of such score.

(4) An RP, PRP or Other Person ~~y-person~~ performing response actions at a Tier IB disposal site that receives a total score equal to or greater than 550 upon re-~~evaluating the disposal site~~ ~~scoring~~ shall submit an application to the Department for a Major Modification of a Tier I Permit in accordance with 310 CMR 40.0707 to upgrade the permit category to Tier IA within 60 days of obtaining knowledge of such score.

(5) An RP, PRP or Other Person may downgrade the Tier Classification category of a disposal site after re-~~evaluating the disposal site pursuant to 310 CMR 40.0530~~ ~~scoring~~. To do so, an RP, PRP or Other Person for a Tier IA, Tier IB or Tier IC disposal site shall submit a revised Tier Classification Submittal and an application for a Major Permit Modification to the Department in accordance with 310 CMR 40.0707.

(6) Except as otherwise specified by the Department, reclassification of a disposal site by an RP, PRP or Other Person who has been performing and is continuing to perform response actions at such disposal site shall not change the original deadlines applicable to such disposal site as detailed in 310 CMR 40.0550(1) and (2) or 310 CMR 40.0560(1) and (2), as they originally applied.

(1) Each person filing a Tier Classification Submittal for a Tier II disposal site with the Department shall include the certification required by 310 CMR 40.0009 and the following written declaration:

"I attest under the pains and penalties of perjury that (i) I/the person(s) or entity(ies) on whose behalf this submittal is made has/have personally examined and am/is familiar with the requirements of M.G.L. c. 21E and 310 CMR 40.0000; (ii) based upon my inquiry of the/those Licensed Site Professional(s) employed or engaged to render Professional Services for the disposal site which is the subject of this Transmittal Form and of the person(s) or entity(ies) on whose behalf this submittal is made, and my/that person's(s') or entity's(ies') understanding as to the estimated costs of necessary response actions, that/those person(s) or entity(ies) has/have the technical, financial and legal ability to proceed with response actions for such site in accordance with M.G.L. c. 21E, 310 CMR 40.0000 and other applicable requirements; and (iii) that I am fully authorized to make this attestation on behalf of the person(s) or entity(ies) legally responsible for this submittal. I/the person(s) or entity(ies) on whose behalf this submittal is made is aware of the requirements in 310 CMR 40.0172 for notifying the Department in the event that I/the person(s) or entity(ies) on whose behalf this submittal is made am/is(are) unable to proceed with the necessary response actions."

(2) Each person filing a Tier II Classification Submittal with the Department shall include therein a statement detailing such person's history of compliance with the Department's regulations, including, but not limited to, M.G.L. c. 21E, 310 CMR 40.0000, and other laws for the protection of health, safety, public welfare and the environment administered or enforced by the Department or other federal, state and local government agencies, that are relevant to conditions at the disposal site.

(3) Each person filing a Tier Classification Submittal for a Tier I disposal site shall provide the certifications required with a Tier I Permit Application in accordance with 310 CMR 40.0703(9).

~~(4) Each person filing a Tier II Extension Submittal pursuant to 310 CMR 40.0630(4) for a Waiver site, and each person who is the transferee for a Waiver Site pursuant to 310 CMR 40.0550(8), shall include the certification required by 310 CMR 40.0009 and either the written declaration in 310 CMR 40.0540(1) or the following written declaration:~~

~~"I attest under the pains and penalties of perjury that (i) I/the person(s) or entity(ies) on whose behalf this submittal is made has/have personally examined and am/is familiar with the requirements of M.G.L. c. 21E and 310 CMR 40.0000; (ii) based upon my inquiry of the Consultant of Record for the disposal site which is the subject of this Transmittal Form~~

~~and of the person(s) or entity(ies) on whose behalf this submittal is made, and my/that person's(s') or entity's(ies') understanding as to the estimated costs of necessary response actions, such disposal site, I believe that I that/those person(s) or entity(ies) has/have the technical, financial and legal ability to proceed with response actions for such site in accordance with M.G.L. c. 21E, 310 CMR 40.0000 and other applicable requirements; and (iii) that I am fully authorized to make this attestation on behalf of the person(s) or entity(ies) legally responsible for this submittal. I/the person(s) or entity(ies) on whose behalf this submittal is made is aware of the requirements in 310 CMR 40.0172 for notifying the Department in the event that I/the person(s) or entity(ies) on whose behalf this submittal is made am/is(are) unable to proceed with the necessary response actions."~~

#### 40.0550: Response Action Deadlines and Requirements for Tier I Disposal Sites

(1) Deadlines for Response Action Outcomes. Except as expressly provided by 310 CMR 40.0530(6) or 310 CMR 40.0000 or as otherwise ordered or agreed to in writing by the Department, any person undertaking response actions at a Tier I disposal site pursuant to a Tier I Permit, as described in 310 CMR 40.0700, shall achieve a Response Action Outcome pursuant to 310 CMR 40.1000 within five years of the effective date of such permit.

(2) Deadlines for Submittals. Except as expressly provided ~~in~~by 310 CMR 40.0530(6), 310 CMR 40.0550(3), or ~~as expressly provided by~~ 310 CMR 40.0000, or as otherwise ordered or agreed to in writing by the Department, any person undertaking response actions at a Tier I disposal site pursuant to a Tier I Permit shall submit the following documents to the Department by the following deadlines:

(a) a scope of work for a Phase II - Comprehensive Site Assessment pursuant to 310 CMR 40.0834 prior to the implementation of Phase II field work, unless the Phase II field work had been implemented prior to Tier Classification;

(ab) Phase II Report, and, if applicable, a Phase III Remedial Action Plan within two years of the effective date of such permit;

(bc) a Phase IV Remedy Implementation Plan within three years of the effective date of such permit;

(ed) a Response Action Outcome Statement pursuant to 310 CMR 40.1000 within five years of the effective date of such permit; and

(de) any other submittal as required by the terms and conditions of a Tier I Permit pursuant to 310 CMR 40.0740.

(3) Notwithstanding any provision of 310 CMR 40.0550(2) to the contrary, submittal to the Department of those documents described in 310 CMR 40.0550(2)(a) through (c) shall not be required at any disposal site for which

a Response Action Outcome Statement is submitted to the Department prior to an applicable document submittal deadline.

(4) Approvals for Tier I Disposal Sites.

(a) Except as provided in 310 CMR 40.0550(4)(b), an RP, PRP or Other Person undertaking response actions at a Tier I disposal site pursuant to a Tier I Permit may perform the response actions which are the subject of the submittals required by 310 CMR 40.0550(2) without the Department's prior approval thereof.

(b) Notwithstanding 310 CMR 40.0550(4)(a), the Department may at any time require an RP, PRP or Other Person undertaking response actions at a Tier I disposal site to obtain prior Departmental approval of one or more of the submittals specified by 310 CMR 40.0550(2) or the response actions or submittals required pursuant to 310 CMR 40.0800. The Department may require such prior approval for submittals or response actions as they relate to the entire disposal site or to some portion thereof.

(4) Approvals for Tier I Disposal Sites:

(a) Tier IA disposal sites:

~~1. Except as expressly provided by these regulations or as otherwise ordered or agreed to in writing by the Department, any person undertaking response actions pursuant to a Tier IA Permit shall obtain Departmental approval of each of the submittals required by 310 CMR 40.0550(2), any Release Abatement Measure pursuant to 310 CMR 40.0400, any Downgradient Property Status Submittal pursuant to 310 CMR 40.0180 and other applicable response actions conducted pursuant to Phases IV and V under 310 CMR 40.0800.~~

~~2. As a result of Departmental review of proposed Tier IA response action plans and/or submittals, the Department may set Interim Deadlines or extend any of the deadlines in 310 CMR 40.0550(2). The extended deadline may be incorporated into a Tier IA Permit issued pursuant to 310 CMR 40.0700.~~

(b) Tier IB and Tier IC disposal sites. Unless otherwise required by the Department pursuant to a permit, order or determination, any person undertaking response actions pursuant to a Tier IB or Tier IC Permit may perform the response actions which are the subject of the submittals required by 310 CMR 40.0550(2) without the Department's prior approval thereof after a Tier I Permit is issued.

(5) Notification of Delay in Compliance With Deadlines for Tier IA, Tier IB and Tier IC Disposal Sites. Except as provided by 310 CMR 40.0025 and 40.0167, the RP, PRP or Other Person performing response action shall notify the Department in writing prior to missing any of the following deadlines or time periods, and state the reason for such delay, the measure or measures to be taken to minimize the delay, the schedule for implementing those measures, and shall take appropriate measures to

minimize if any delay in compliance with any deadline or time period required:

~~(a) by 310 CMR 40.0550(2)(a), (b), or (c);~~

~~(b) in conditions in a Permit issued pursuant to 310 CMR 40.0700; or~~ any other determination or deadline for response actions set forth in writing by the Department.

~~(c) in a determination issued by the Department, occurs after issuance of a Tier IB or Tier IC Permit, the person who is responsible for performing the response action shall notify the Department in writing prior to the running of any such deadline or time period, and state the reason for such delay, the measure or measures to be taken to minimize the delay and a proposed schedule for implementing those measures, and shall take appropriate measures to minimize the delay.~~

Providing such notice does not forgive an RP's, PRP's or Other Person's noncompliance with deadlines for response actions in 310 CMR 40.0000.

(6) Notifications. After permitting pursuant to 310 CMR 40.0700, an RP, PRP or Other Person for a Tier IA, Tier IB or Tier IC disposal site shall make the following notifications to the Department within the following timeframes:

(a) notification of the commencement of initial field activities related to the implementation of Comprehensive Response Actions Phase II for any work not previously completed prior to permitting, and Phases III through V pursuant to 310 CMR 40.0800, at least seven days prior to their initiation. Upon such notification, the Department may impose conditions on and/or arrange to observe the conduct of field work including, but not limited to, the installation of monitoring wells, the excavation of test pits, field sampling of environmental media, soil removal, installation of groundwater recovery systems, the start of Phase IV construction activities, and observation of Phase V monitoring activities; and

(b) any other notifications specified in a Tier I Permit within the required timeframes.

#### 40.0560: Response Action Deadlines and Requirements for Tier II Disposal Sites

(1) Deadlines for Response Action Outcomes. Except as expressly provided by 310 CMR 40.0530(6) or 310 CMR 40.0000 ~~these regulations~~ or as otherwise ordered or agreed to in writing by the Department, an RP, PRP or Other Person ~~any person~~ undertaking response actions at a Tier II disposal site shall achieve a Response Action Outcome within five years of the effective date of initial Tier Classification.

(a) A Tier II Classification for a disposal site shall expire five years from the effective date of the initial Tier Classification of such disposal site; and

(b) An RP, PRP or Other Person shall not conduct Comprehensive Response Actions pursuant to 310 CMR 40.0800 at a disposal site for which a Tier II Classification has expired unless a Tier II Classification Extension is obtained pursuant to 310 CMR 40.0560(7).

(2) Deadlines for Submittals. Except as provided ~~in~~by 310 CMR 40.0530(6), 310 CMR 40.0560(3), or ~~as expressly provided by~~ 310 CMR 40.0000 or as otherwise ordered or agreed to in writing by the Department, ~~an RP, PRP or Other Person~~any person undertaking response actions at a Tier II disposal site shall submit the following documents to the Department by the following deadlines:

- (a) a scope of work for a Phase II - Comprehensive Site Assessment pursuant to 310 CMR 40.0834 prior to the implementation of Phase II field work, unless the Phase II field work had been implemented prior to Tier Classification;
- (b) a Phase II Report, and, if applicable, a Phase III Remedial Action Plan, within two years of the effective date of Tier Classification;
- (c) a Phase IV Remedy Implementation Plan within three years of the effective date of Tier Classification; and
- (d) a Response Action Outcome Statement pursuant to 310 CMR 40.1000 within five years of the effective date of Tier Classification.

(3) Notwithstanding any provision of 310 CMR 40.0560(2) to the contrary, submittal to the Department of those documents described in 310 CMR 40.0560(2)(a) through (c) shall not be required at any disposal site for which a Response Action Outcome Statement is submitted to the Department prior to an applicable document submittal deadline.

(4) Approvals and Notice.

(a) Except as provided in 310 CMR 40.0560(4)(b), an RP, PRP or Other Person undertaking response actions at a Tier II disposal site may perform the response actions which are the subject of the submittals required by 310 CMR 40.0560(2) without the Department's prior approval thereof.

(b) Notwithstanding 310 CMR 40.0560(4)(a), the Department may at any time require an RP, PRP or Other Person undertaking response actions at a Tier II disposal site to obtain prior Departmental approval of one or more of the submittals specified by 310 CMR 40.0560(2) or the response actions or submittals required pursuant to 310 CMR 40.0800. The Department may require such prior approval for submittals or response actions as they relate to the entire the disposal site or to some portion thereof.

~~(a) Except as expressly provided by 310 CMR 40.0000 or as otherwise required by the Department, any person undertaking response actions at a Tier II disposal site may perform the response actions which are the~~

~~subject of the submittals required by 310 CMR 40.0560(2) without the Department's prior approval thereof; and~~

~~(bc)~~ No person shall perform Phase IV response actions at a Tier II disposal site unless and until 20 days have passed from the date of publication of the notice required by 310 CMR 40.1403(6).

(5) Notification of Delay in Compliance With Deadlines for Tier II Disposal Sites. Except as provided by 310 CMR 40.0025 or 40.0167, if any delay in compliance with any deadline or time period required by 310 CMR 40.0560(2) ~~(a), (b) or (c)~~ occurs after a disposal site is classified as Tier II, the RP, PRP or Other pPerson ~~who is responsible for performing the response action~~ shall notify the Department in writing prior to ~~the running of~~missing any such deadline or time period, and state the reason for such delay, the measure or measures to be taken to minimize the delay and a proposed schedule for implementing those measures, and shall take appropriate measures to minimize the delay. Providing such notice does not forgive an RP's, PRP's or Other Person's noncompliance with deadlines for response actions in 310 CMR 40.0000.

(6) Notifications. RPs, PRPs or Other Persons conducting response actions at Tier II disposal sites shall ~~provide the Department with notifications in accordance with the provisions of 310 CMR 40.0550(6)(a).~~make the following notifications to the Department within the following timeframes:

(a) notification of the commencement of initial field activities related to the implementation of Comprehensive Response Actions at least seven days prior to their initiation. Upon such notification, the Department may impose conditions on and/or arrange to observe the conduct of field work including, but not limited to, the installation of monitoring wells, the excavation of test pits, field sampling of environmental media, soil removal, installation of groundwater recovery systems, the start of Phase IV construction activities, and observation of Phase V monitoring activities.

(7) Tier II Classification Extensions.

(a) If a Response Action Outcome Statement ~~or a Waiver Completion Statement~~ indicating that a Temporary or Permanent Solution has been achieved has not been submitted to the Department for a Tier II disposal site prior to the expiration of the Tier II Classification, the person undertaking response actions at such site shall extend the Tier II Classification by submitting a Tier II Extension Submittal to the Department.

(b) The Tier II Extension Submittal shall be provided to the Department at least 45 days before~~no later than 60 days before~~ the date of expiration of the Tier II Classification.

(c) The Tier II Extension Submittal shall consist of the following:



1. a completed transmittal form using a form provided by the Department for such purposes, which shall include a statement explaining why a Temporary or Permanent Solution has not been achieved at the site.
2. a description of the status of response actions including a plan and a proposed schedule for implementing such plan which details the steps that will be taken in order to achieve, at a minimum, a Class C Response Action Outcome at the disposal site pursuant to 310 CMR 40.1000 within one year of the effective date of the Tier II Classification Extension, and a schedule for achieving a Permanent Solution, if feasible;
3. the certification required by 310 CMR 40.0009;
4. the certification required by 310 CMR 40.0540(1);
5. an updated compliance history required by 310 CMR 40.0540(2) since the effective date of the Tier II Classification, ~~or since the Waiver approval date if the disposal site is a Waiver site~~; and
6. an LSP Opinion indicating that the plans and/or reports submitted are in conformance with the requirements of 310 CMR 40.0000.

~~(d) In place of the LSP Opinion described in 310 CMR 40.0560(7)(c)6, an RP, PRP or Other Person for a Waiver site may submit a statement from the Consultant of Record indicating that the plans and/or reports submitted are in conformance with the requirements of 310 CMR 40.0560(7) and 310 CMR 40.000, the 1988 MCP.~~

(ed) A Tier II Classification Extension shall take effect 6045 days after submission of a complete Tier II Extension Submittal to the Department unless the Department issues a written denial for such extension prior to the termination of such 6045 day time period. The extension shall be effective for a period of one year from the effective date of the ~~beyond the expiration date of the initial~~ Tier II ~~e~~Classification Extension. An RP, PRP or Other Person shall notify the Department pursuant to this section if additional extensions are required on an annual basis thereafter; ~~and~~

~~(fe)~~ The Department reserves the right to reconsider the need for Departmental oversight or to initiate enforcement actions ~~upon audit of related to~~ any Tier II Extension Submittal or when any timeline for achieving an RAO pursuant to 310 CMR 40.0560 is exceeded; ~~and~~

(f) A Tier II Extension obtained under 310 CMR 40.0560(7) does not forgive an RP's, PRP's or Other Person's noncompliance with any provisions of 310 CMR 40.0000, including but not limited to, noncompliance that resulted from the late submittal or failure to submit an IRA Plan, Status Report, Phase I Report, Tier Classification, Phase II Report, Phase III Remedial Action Plan, Phase IV Remedy Implementation Plan, and/or failure to achieve a Response Action Outcome. A Tier II Extension means the RP, PRP or Other Person has approval to continue with response actions in compliance with all applicable provisions of 310 CMR 40.0000. Such Extension shall not be



construed as approval by the Department of the scope or adequacy of plans or of the response actions as actually conducted.

(8) Changes in Persons Undertaking Response Actions at Tier II Disposal Sites.

(a) No person other than a person who has filed a Tier II Classification Submittal for a disposal site with the Department ~~or has received a Waiver of Approvals from the Department for a disposal site~~ may perform Comprehensive ~~Response~~ actions at such disposal site, unless that person submits a Tier II Transfer Submittal to the Department.

(b) A Tier II Transfer Submittal shall consist of the following:

1. a completed transmittal form using a form provided by the Department for such purposes, which shall include a statement and/or report explaining the reasons for the change in persons undertaking response actions and a proposed effective date for such change. ~~Such transmittal form shall be provided to the Department at least 60 days in advance of the proposed effective date of the change;~~
2. a listing of all Status and Phase Reports for response actions completed since the effective date of the Tier II Classification or Waiver of Approvals;
3. the certification required by 310 CMR 40.0009 by the current RP, PRP or Other Person for such disposal site and by the transferee;
4. the certification required by 310 CMR 40.0540(1) by the transferee;
5. the compliance history required by 310 CMR 40.0540(2) for the transferee; and
6. an LSP Opinion indicating that the plans and/or reports submitted are in conformance with the requirements of these regulations.

~~(c) In place of the LSP Opinion described in 310 CMR 40.0560(8)(b)6., an RP, PRP or Other Person for a Waiver site may submit a statement from the Consultant of Record indicating that the plans and/or reports submitted are in conformance with the requirements of 310 CMR 40.0560(8) and 310 CMR 40.000, the 1988 MCP.~~

~~(dc)~~ A change in persons conducting response actions at a Tier II disposal site shall take effect 2145 days after submission of a complete Tier II Transfer Submittal to the Department unless the Department issues a written denial of such transfer prior to the termination of such 2145 day time period. ~~Upon such effective date any Waiver of Approvals for the Tier II disposal site shall be deemed revoked;~~

~~(e) Any person who is not the RP, PRP or Other Person who filed a Tier Classification Submittal with the Department or received a Waiver of Approvals from the Department who undertakes response actions at a Tier II disposal site in accordance with this section shall complete such~~

~~response actions by the deadlines that are applicable to the RP, PRP or Other Person who first filed the Tier Classification Submittal or received the Waiver of Approvals for such disposal site; and~~

(~~fd~~) The Department reserves the right to reconsider the need for Departmental oversight or to initiate enforcement actions ~~upon audit of related to~~ any Tier II Transfer Submittal or when any timeline for achieving an RAO pursuant to 310 CMR 40.0560 at a Tier II disposal site is not met.

#### 40.0580: Periodic Evaluation of Temporary Solutions at Tier I and Tier II Disposal Sites

(1) At any Tier I or Tier II disposal site where a Temporary Solution has been implemented and a Class C RAO Statement or a Waiver Completion Statement indicating that a Temporary Solution has been achieved has been submitted to the Department, the RP, PRP or Other Person shall undertake a periodic evaluation of the Temporary Solution and shall submit to the Department an LSP Periodic Review Opinion evaluating the status of the Temporary Solution not less than every fifth year after the date of filing of such Class C Response Action Outcome Statement or Waiver Completion Statement.

(2) If a Class C Response Action Outcome Statement or Waiver Completion Statement indicating that a Temporary Solution has been achieved has been filed with the Department for a disposal site, neither a Permit Extension nor a Tier II Classification Extension shall be required solely to perform a periodic evaluation of the Temporary Solution at such disposal site, unless otherwise required by the Department.

(3) Content of a Periodic Review Opinion for a Temporary Solution Evaluation. The LSP Periodic Review Opinion required by 310 CMR 40.0580(1) shall address the following:

- (a) the effectiveness of the Temporary Solution(s);
- (b) any changes in activities, uses and/or exposures that may cause an actual or potential increase in exposure for human or environmental receptors to oil and/or hazardous material;
- (c) if applicable, an evaluation of an Activity and Use Limitation pursuant to 310 CMR 40.1080;
- (d) any necessary and required response actions to maintain the Temporary Solution and, if applicable, the Activity and Use Limitation, in the event that the Temporary Solution and/or the Activity and Use Limitation is no longer maintaining No Significant Risk for the disposal site; such response actions shall be initiated pursuant to 310 CMR 40.0581 or 40.0582, whichever is applicable;
- (e) the feasibility of implementing one or more Permanent Solutions for the disposal site pursuant to 310 CMR 40.0861(2)(h); and
- (f) the certification required in 310 CMR 40.0009.

40.0581: Conducting Response Actions at a Tier I Disposal Site ~~With~~after a -an RAO Response Action Outcome has been Submitted to the Department

(1) Each person who intends to conduct any of the response actions listed below shall either conduct such response actions in accordance with an effective Tier I Permit or obtain a Permit Extension from the Department in accordance with 310 CMR 40.070~~63~~ and 40.07~~06~~24:

(a) implement a Permanent Solution at a Tier I disposal site after a Class C Response Action Outcome Statement has been submitted to the Department;

(b) implement response actions pursuant to 310 CMR 40.1080 at a disposal site where an Activity and Use Limitation is in place in order to maintain No Significant Risk;

(c) conduct further response actions at a disposal site where an Activity and Use Limitation is in place in order to withdraw such Limitation in order to allow certain site uses or activities which are prohibited pursuant to the existing Activity and Use Limitation; or

(d) implement response actions after a Periodic Evaluation conducted pursuant to 310 CMR 40.0580(1) reveals that more substantial response actions are required to maintain the Temporary Solution at such disposal site other than those that may be conducted for normal maintenance of the Class C RAO pursuant to a post-Class C RAO Operation, Maintenance and/or Monitoring Plan pursuant to 310 CMR 40.0896.

(2) Each person who intends to conduct response actions pursuant to 310 CMR 40.0581(1) in accordance with an effective Tier I Permit shall notify the Department in writing of such intent prior to implementing such actions.

(3) Each person who intends to conduct response actions pursuant to 310 CMR 40.0581(1) shall submit with the Tier I Permit Extension required by 310 CMR 40.0581(1) or the notice described in 310 CMR 40.0581(2), whichever is applicable, those reports, plans and proposed schedules required for such response actions pursuant to 310 CMR 40.0581(1).

(4) The Department will assess the applicable annual compliance assurance fee in accordance with 310 CMR 4.00 upon ~~issuance~~approval of any Tier I Permit Extension required by 310 CMR 40.0581(1) or upon receipt of the notice required by 310 CMR 40.0581(2), whichever is applicable.

40.0582: Conducting Response Actions at a Tier II Disposal Site ~~With~~after a Response Action Outcome has been Submitted to the Department-RAO

(1) A person who intends to conduct any of the response actions listed below shall either conduct such response actions in accordance with an

effective Tier II Classification or obtain a Tier II Classification Extension pursuant to 310 CMR 40.0560(7):

- (a) implement a Permanent Solution at a Tier II disposal site after a Class C Response Action Outcome Statement has been submitted to the Department;
  - (b) implement response actions pursuant to 310 CMR 40.1080 at a disposal site where an Activity and Use Limitation is in place in order to maintain No Significant Risk;
  - (c) conduct further response actions at a disposal site where an Activity and Use Limitation is in place in order to withdraw such Limitation in order to allow certain site uses or activities which are prohibited pursuant to the existing Activity and Use Limitation; or
  - (d) implement response actions after a Periodic Evaluation conducted pursuant to 310 CMR 40.0582(1) reveals that more substantial response actions are required to maintain the Temporary Solution at such disposal site other than those that may be conducted for normal maintenance of the Class C RAO pursuant to a post-Class C RAO Operation, Maintenance and/or Monitoring Plan pursuant to 310 CMR 40.0896.
- (2) Each person who intends to conduct response actions pursuant to 310 CMR 40.0582(1) and who is not the person who submitted the applicable RAO for the disposal site shall comply with the provisions of 310 CMR 40.0560(8) prior to implementing such response actions.
- (3) Each person who intends to conduct response actions pursuant to 310 CMR 40.0582(1) in accordance with an effective Tier II Classification shall notify the Department in writing of such intent prior to implementing such actions.
- (4) Each person who intends to conduct response actions pursuant to 310 CMR 40.0582(1) shall submit with the Tier II Extension Submittal required by 310 CMR 40.0582(1) or the notice described in 310 CMR 40.0582(3), whichever is applicable, those reports, plans and proposed schedules required for such response actions pursuant to 310 CMR 40.0582(1).
- (5) The Department will assess Tier II annual compliance assurance fees in accordance with 310 CMR 4.00 upon receipt of any Tier II Extension Submittal required by 310 CMR 40.0582(1) or upon receipt of the notice required by 310 CMR 40.0582(3), whichever is applicable.

40.0583: Department Reclassification of a Tier ~~IA Classified~~ Disposal Site

- (1) General. The Department may, on its own initiative, reclassify a Tier IA, Tier IB, Tier IC, Tier ID or Tier II disposal site to a different Tier Classification ~~Tier IB, Tier IC, or Tier II disposal site~~ pursuant to 310 CMR 40.0583. ~~Such reclassification shall not occur after the~~

~~Department has issued an approval of a Phase III Remedial Action Plan.~~

(2) Effect of Reclassification. A Reclassification made in accordance with 310 CMR 40.0583 shall have the effect of superseding the existing site classification.

(3) Criteria. The Department shall consider the criteria in 310 CMR 40.0730(1) when reclassifying a Tier ~~Classified~~<sup>IA</sup> disposal site.

40.0584: Participation by the Public, RPs, PRPs and Other Persons in Department Reclassification

(1) ~~Prior to~~<sup>Within seven days</sup> of reclassifying a Tier ~~IA~~<sup>Classified</sup> disposal site pursuant to 310 CMR 40.0583, the Department shall provide notice ~~to the public at least 21 days prior to issuance~~ of the Reclassification as follows:

(a) by publishing a legal notice in a newspaper which circulates in the community(ies) in which the disposal site is located and in any newspapers which circulate in any other community(ies) the Department believes are likely to be affected by the disposal site;

(b) by mail or hand delivery of a copy of the legal notice to the Chief Municipal Officer and Board of Health in the community(ies) in which the disposal site is located and in any other community(ies) which the Department believes are likely to be affected by the disposal site;

(c) by mail or hand delivery to any person the Department reasonably believes:

1. is an RP or a PRP for the disposal site;

2. ~~if applicable,~~ is the permittee of ~~the a~~ Tier ~~IA~~<sup>Classified</sup> disposal site;

3. holds title to, or an ownership interest in any real property comprising the disposal site or portion thereof or which may be affected by the disposal site and whose name and address is known to the Department at the time the Department decides to re-classify the disposal site; and

4. is the operator of the disposal site, if different from the owner;

(d) if the disposal site is a Public Involvement Plan (PIP) site, by mail to each person whose name and address appears on the PIP mailing list established pursuant to 310 CMR 40.1400;

(2) Content of Notice. The notice required by 310 CMR 40.0584(1) shall include, but not be limited to, the following information:

(a) the name and address of the disposal site;

(b) the DEP Release Tracking Number(s), and the permit number;

(c) the intended Reclassification category of the disposal site; ~~and~~

(d) a statement of the basis for the Reclassification.~~;~~

- ~~(e) a description of the procedures by which persons interested in commenting may submit comments to the Department;~~
- ~~(f) the deadline established by the Department for receipt of public comments; and~~
- ~~(g) any additional information deemed by the Department to be relevant to the intended Reclassification.~~

~~(3) Procedures For Submission of Comments.~~

- ~~(a) Interested persons may submit written comments to the Department within 21 days of being provided notice of the proposed Reclassification, or within such other time period the Department determines is appropriate. Such written comments shall be submitted to the Department by mail or by hand delivery during normal Department business hours.~~
- ~~(b) The Department shall consider and respond as it deems appropriate to public comments submitted in accordance with 310 CMR 40.0584(3).~~
- ~~(c) On its own initiative, and with notice in accordance with 310 CMR 40.0584(1), the Department may extend the period for submission of public comments.~~

~~(4) Final Reclassification. Within 60 days after the close of the public comment period and any extensions thereof, the Department shall decide whether to make the Reclassification effective. The Department shall provide written notice of its Reclassification decision to all persons described in 310 CMR 40.0584(1)(b) through (d) and to all persons who have submitted written comments pursuant to 310 CMR 40.00584(3).~~

40.0585: Right to Request an Adjudicatory Hearing

(1) Any person who is aggrieved by a decision of the Department to reclassify a disposal site pursuant to 310 CMR 40.0583 to a Tier Classification category that is higher than the previous classification may request an adjudicatory hearing before the Department in accordance with 310 CMR 40.0050.

(2) A request for adjudicatory hearing pursuant to 310 CMR 40.0585 shall:

- (a) comply with 310 CMR 40.0050 and 310 CMR 1.00; and
- (b) state the reason(s) the decision to reclassify does not comply with 310 CMR 40.0000.

(3) The adjudicatory hearing shall be limited to the issue of whether the Department's decision to reclassify is in accordance with the criteria set forth in 310 CMR 40.0583(3).

40.0590: Public Involvement

Public involvement activities shall be conducted in accordance with 310 CMR 40.1400 through 40.1406. Public involvement requirements relevant to Tier Classification include, but are not limited to, those activities set forth at 310 CMR 40.1403(6) and 40.1406(3).

#### SUBPART G: TIER I PERMITS

- 40.0700: Tier I Permits
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- 40.0730: Department Review Issuance of Tier I Permits Applications, Major Modifications, Transfers of Extensions
- 40.0731: Criteria for ~~Permit~~ Denials of Tier I Permits, Major Modifications, Transfers or Extensions
- 40.0740: ~~Permit~~ Conditions Applicable to all Tier I Permits
- 40.0750: Tier I Permit Effective Date
- 40.0751: Duration of Tier I Permits
- 40.0760: Tier I Permit Suspension and Revocation
- 40.0770: Right to Request An Adjudicatory Hearing

#### SUBPART G: TIER I PERMITS

##### 40.0700: Tier I Permits

The regulations published at 310 CMR 40.0700 through 40.0799, cited collectively as 310 CMR 40.0700, establish the requirements, standards and procedures for ~~issuing, obtaining,~~ modifying, transferring, extending, suspending and revoking Tier I Permits. The regulations published at 310 CMR 4.00, which govern permit application fees, annual compliance assurance fees and schedules for timely action, also apply to Tier I Permits and shall be consulted as necessary.

##### 40.0702: Applicability



(1) Except as provided in 310 CMR 40.0000, including, but not limited to, 310 CMR 40.0702(4), a Tier I Permit is required to conduct Comprehensive Response Actions pursuant to 310 CMR 40.0870 for any disposal site classified as Tier A, Tier IB or Tier IC pursuant to 310 CMR 40.0500 or 40.0600.

~~(2) An RP, PRP or Other Person for a disposal site (the "applicant") who has submitted a permit application to the Department for:~~

~~(a) an Initial Tier IA Permit;~~

~~(b) an upgrade of a Tier IC or Tier IB Permit to Tier IA; or~~

~~(c) a downgrade of a Tier IA Permit, shall obtain written approval from the Department to initiate or to continue to perform Phase II through Phase III Comprehensive Response Actions under 310 CMR 40.0830 and 40.0850, respectively, prior to Departmental approval of such permit application. The applicant may continue any approved IRA or RAM at such disposal site in accordance with 310 CMR 40.0410 and 40.0440, respectively.~~

(32) No person shall ~~initiate or~~ continue to perform Comprehensive Response Actions under 310 CMR 40.0870 at a disposal site classified as Tier II after he or she obtains reason to believe that, as a result of new or additional information obtained and/or as a result of re-scoring pursuant to 310 CMR 40.0530(2), such disposal site requires reclassification as a Tier I disposal site, unless and until such person ~~obtains~~submits a Tier I Permit Application.

(34) A Tier I Permit is not required to perform Comprehensive Response Actions at disposal sites where the Department is conducting response actions.

~~(54) Except as provided in 310 CMR 40.0703(2), a A person who does not have a Tier I Permit for a disposal site for which a Tier I Permit is required shall not perform any Comprehensive #Response aActions at such disposal site unless such person is conducting an Immediate Response Action in accordance with 310 CMR 40.0410 or Initial Site Investigation Activities as described in 310 CMR 40.0405(1), up to and including those investigative activities conducted in preparation of a Phase I Report, Numerical Ranking System scoresheet and Tier Classification and/or Permit application.~~

~~(6) Prior to receipt of a Tier I Permit, any person undertaking response actions at a disposal site that has been classified as a priority disposal site pursuant to 310 CMR 40.000, the 1988 regulations, shall perform such response actions in accordance with 310 CMR 40.0640, the Transition Provisions, and other applicable provisions of 310 CMR 40.0000.~~

~~(75) Except as provided in 310 CMR 40.0703(2), nNo~~ person shall initiate or continue to perform Comprehensive Response Actions at a Tier I



disposal site after ~~the~~ Tier I Permit ~~obtained by~~issued to such person for the Tier I disposal site has expired, unless and until such person obtains a Permit Extension in accordance with 310 CMR 40.0706 and 40.072420.

(~~8~~6) An application for a Tier I Permit may be submitted to perform Comprehensive Response Actions at a portion of a disposal site that comprises a single parcel of land or multiple parcels of land.

#### 40.0703: Requirements for All Tier I Permit Applications.

All applicants for all Tier I Permits shall comply with the following requirements:

(1) Content of Application. Except as expressly provided by 310 CMR 40.0704 through 40.0707, each Tier I Permit application filed with the Department shall include, at a minimum, the following:

- (a) a completed Transmittal Form for Permit Application and Payment using the form established by the Department for such purposes;
- (b) the applicable, completed Permit Application form using the form established by the Department for such purposes;
- (c) the certifications required by 310 CMR 40.0009 and 40.0703(9)(a) and (10);
- (d) the applicable permit application fee payable under 310 CMR 4.00 (to be sent to DEP's Lockbox for payments);
- (e) a photocopy of the fee payment (to be included in the permit application);
- (f) the compliance history required by 310 CMR 40.0703(9)(b);
- (g) ~~a statement affirming publication of the~~ tearsheet(s) from the newspaper(s) containing the legal notice required by 310 CMR 40.0703(8)(a)1., with the date of the publication and name of the newspaper and a copy of such notice;
- (h) a copy of the cover letter and notices submitted to the Chief Municipal Officer(s) and Board(s) of Health required by 310 CMR 40.0703(8)(a)2.;
- (i) the certification of the Primary Representative, if applicable, required by 310 CMR 40.0703(7); and
- (j) a list of all Status Reports, Phase Reports, or Completion Statements for any of the following response actions that are in progress or have been completed at the disposal site at the time of the Permit application that provides the dates on which such Reports or Statements were submitted to the Department or, for those response actions in progress, a description of the current status and projected schedule for completion of such response actions:
  - 1. any Immediate Response Action under 310 CMR 40.0410;
  - 2. any Release Abatement Measure under 310 CMR 40.0440;
  - 3. any Utility-related Abatement Measure under 310 CMR 40.0460;and

4. notwithstanding 310 CMR 40.0702(2) and (3), any Comprehensive Response Actions in progress or which have been completed pursuant to 310 CMR 40.0800 at the time of the Permit Application.

(2) Conducting Response Actions after Submission and prior to Approval of a~~During Permit Application Review.~~ ~~Except as provided in 310 CMR 40.0702(2) and (3), a~~An applicant may initiate or continue Preliminary Response Actions pursuant to 310 CMR 40.0400 or Phase II and/or Phase III Comprehensive Response Actions pursuant to 310 CMR 40.08030 and 310 CMR 40.0850, respectively, at a disposal site during the period after~~while~~ a Tier I Permit ~~a~~Application has been submitted and prior to its approval pursuant to 310 CMR 40.0720~~is being reviewed by the Department, as follows:~~

~~(a) If the application is for an Initial Tier IC or IB permit, an upgrade of a Tier IC permit to Tier IB, a downgrade of a Tier IB permit to Tier IC, or a downgrade of a Tier IB or Tier IC permit to Tier II, the applicant shall submit a description of all proposed or continuing response actions that, in the Opinion of an LSP, would not adversely affect disposal site conditions, increase the level of risk posed by the disposal site, or jeopardize future site investigations or response actions, and should continue during the Department's Permit application review.~~

~~1. The applicant may continue with response actions pursuant to the LSP Opinion upon submittal to the Department of the information required in 310 CMR 40.0703(1) and (2); and~~

~~2. if necessary, the Department shall notify the applicant during the permit application review period of the need to cease or otherwise alter any continuing response actions.~~

~~(b) The applicant may continue any approved IRA or RAM pursuant to 310 CMR 40.0410 and 40.0440, respectively. Status Reports shall be submitted pursuant to the requirements of 310 CMR 40.0703(1)(j).~~

(3) Filing. The applicant shall file an original application ~~plus one additional copy~~ with the Department.

(4) Presentation. All data, facts and other information provided in any document submitted with a Tier I Permit application shall be current and presented clearly and concisely. Any supporting material and/or data upon which a Tier I Permit application relies, in whole or in part, shall be included in the Tier I Permit application.

(5) Multiple Applicants. In the event that more than one person is applying for a Tier I Permit, each applicant shall submit:

- (a) the certification required at 310 CMR 40.0009;
- (b) the certification required at 310 CMR 40.0703(9)(a);
- (c) the compliance history required by 310 CMR 40.0703(9)(b).

(6) LSP Opinions. All Tier I Permit applications shall include an LSP Opinion that such application has been prepared pursuant to the provisions of 310 CMR 40.0000, and shall include the signature and seal of the LSP-of-Record.

(7) Primary Representative.

(a) In the event that more than one person is applying for a Tier I Permit, the applicants shall designate and maintain a Primary Representative authorized to act on their behalf for the following purposes:

1. to receive oral and written correspondence from the Department with respect to the application, as needed;
2. to receive oral and written correspondence from the Department with respect to the performance of response actions conducted pursuant to the~~upon issuance of a~~ Tier I Permit; and
3. to receive any statement of fee required by 310 CMR 4.03(3) upon issuance of a~~associated with the~~ Tier I Permit.

(b) The Primary Representative shall certify in writing to the Department that he or she is fully authorized to act on behalf of the applicants for the purposes stated in 310 CMR 40.0703(7)(a).

(c) Upon ~~issuance~~issuance~~submittal~~ of a permit application, receipt of ~~any of the material submitted~~issued by the Department to the Primary Representative under 310 CMR 40.0703(7)(a) shall be deemed to be received by all permittees.

(d) The Department shall be notified of any change in the designation of the Primary Representative no later than ten days after the effective date of such change through the filing of a ~~request for a~~ Minor Permit Modification by the permittees in accordance with 310 CMR 40.0725.

(8) Public Notice Requirements.

(a) Prior to the submission of a Tier I Permit ~~a~~Application, each applicant or group of applicants shall take the following actions to provide notice to the public of the availability of a Tier I Permit ~~a~~Application for review and comment:

1. a legal notice shall be published in a newspaper ~~which~~that circulates in the community(ies) in which the disposal site is located and in any newspapers ~~which~~that circulate in any other community(ies) which is, or is likely to be, affected by the disposal site; and
2. at least three days prior to publication of the legal notice, a copy of the notice shall be delivered by mail or hand to the Chief Municipal Officer and Board of Health in the community(ies) in which the disposal site is located and in any other community(ies) ~~which~~that is, or is likely to be, affected by the disposal site.

(b) The legal notice required by 310 CMR 40.0703(8)(a) shall be in a form established by the Department for such purposes and shall include, but not be limited to, the following information:

1. the name and address of the disposal site;
2. the DEP Release Tracking Number(s), and the permit number, if one has been assigned;
3. the name, address, and telephone number of the permit applicant(s);
4. the proposed Tier I Permit category of the disposal site, as determined in accordance with 310 CMR 40.0500;
5. ~~the type of application the applicant(s) intends to file with the Department, and, if applicable, a brief explanation of the reason for any permit transfer, modification or extension;~~
65. the date on or about which the applicant(s) intends to file the application with the Department; and
76. a description of the procedures by which ~~members of the public~~interested persons may review and comment on the permit application.;
- ~~8. the deadline by which members of the public must notify the Department in writing to participate in the permit application review process; and~~
- ~~9. a statement that a person who submits written comment during the public comment period(s) may petition to intervene to become a party in the proceeding and that failure to submit such comment may result in waiver of any right to an adjudicatory hearing pursuant to 310 CMR 40.0770(2).~~

(c) Interested persons may submit written comments related to a Permit Application within 21 days of the publication of the legal notice required by 310 CMR 40.0703(8)(a)1. Such written comments shall be submitted to the Department by mail or by hand delivery during normal Department business hours and to the Permit applicant.

(d) The Department shall consider and respond as it deems appropriate to public comments submitted in accordance with 310 CMR 40.0703(8)(c).

(e) On its own initiative, the Department may extend the period for submission of public comments.

~~(ef)~~ The notifications required by 310 CMR 40.0703(8)(a) may be included with the notifications required by 310 CMR 40.1403(6) for purposes of compliance with these subsections.

~~(dg)~~ Prior to the submission of an initial Tier I Permit application, or the submission of a Major Permit Modification application:

1. to upgrade the Tier I Permit Classification; or
2. to downgrade the Tier I Permit Classification to a Tier IB or a Tier IC;

each applicant or group of applicants shall also submit a notice for publication in the Environmental Monitor as required by 310 CMR 40.1406(1).

(9) Demonstration of Ability and Willingness.

(a) Each applicant shall include the following written declaration with a Tier I Permit application:

"I attest under the pains and penalties of perjury that (i) I/the person(s) or entity(ies) on whose behalf this submittal is made has/have personally examined and am/is familiar with the requirements of M.G.L. c. 21E and 310 CMR 40.0000; (ii) based upon my inquiry of the/those Licensed Site Professional(s) employed or engaged to render Professional Services for the disposal site which is the subject of this permit application and of the person(s) or entity(ies) on whose behalf this submittal is made, and my/that person's(s') or entity's(ies') understanding as to the estimated costs of necessary response actions, that/those person(s) or entity(ies) has/have the technical, financial and legal ability to proceed with response actions for such site in accordance with M.G.L. c. 21E, 310 CMR 40.0000 and other applicable requirements; and (iii) that I am fully authorized to make this attestation on behalf of the person(s) or entity(ies) legally responsible for this submittal. I/the person(s) or entity(ies) on whose behalf this submittal is made is aware of the requirements in 310 CMR 40.0172 for notifying the Department in the event that I/the person(s) or entity(ies) on whose behalf this submittal is made am/is(are) unable to proceed with the necessary response actions."

(b) Each applicant shall include a statement as part of the Tier I Permit application detailing such applicant's history of compliance with the Department's requirements, including, but not limited to, M.G.L. c. 21E, 310 CMR 40.0000, and other laws for the protection of health, safety, public welfare and the environment administered or enforced by the Department and other federal, state and local government agencies, that are material to the disposal site.

(10) Certification of Remittance of Permit Application Fee. Each applicant shall include the following written declaration with a Tier I Permit application:

"I attest under the pains and penalties of perjury that, on or before the date of submittal of this permit application to the Department, I remitted, or caused to be remitted, the applicable permit fee payable in accordance with 310 CMR 4.00."

(11) Information Requests. Each applicant shall submit all additional information requested by the Department subsequent to filing an application, within the time specified by the Department in the Department's request.

#### 40.0704: Additional Application Submittal Requirements for Initial Tier I Permit Applications.

(1) Content of Application. In addition to the requirements in 310 CMR 40.0703, each Initial Tier I Permit application filed with the Department shall include the following:

- (a) the Tier Classification Submittal required by 310 CMR 40.0500, including, without limitation, an LSP Tier Classification Opinion;
- (b) the Phase II Scope of Work or conceptual scope of work required by 310 CMR 40.0500; and
- ~~(c) the LSP Opinion regarding proposed or continuing response actions pursuant to 310 CMR 40.0703(2); and~~
- ~~(dc)~~ a statement affirming that notice was submitted for publication in the Environmental Monitor as required by 310 CMR 40.0703(8)(~~dfg~~), and a photocopy of such notice.

40.0705: Additional Application Submittal Requirements for Tier I Permit Transfers

- (1) General. No Tier I Permit shall be transferred unless and until the permittee(s) has transferred such Permit pursuant to 310 CMR 40.07~~23~~20.
- (2) Content of Application. In addition to the requirements in 310 CMR 40.0703, an application for permit transfer shall include the following:
  - (a) the certification required by 310 CMR 40.0009 from the permittee;
  - (b) written consent by the transferee to the terms and conditions of the Tier I Permit;
  - (c) the certification required in 310 CMR 40.0703(9)(a) by the transferee;
  - (d) the transferee's compliance history, as required by 310 CMR 40.0703(9)(b); and
  - (e) a statement as to why the transfer is sought.

40.0706: Additional Application Submittal Requirements for Tier I Permit Extensions

- (1) General.
  - (a) No Tier I Permit expiration date shall be extended unless and until the permittee(s) has obtained a Permit Extension in accordance with 310 CMR 40.07~~24~~20.
  - (b) Except as provided by 310 CMR 40.0703(2), no person shall initiate or continue to perform Comprehensive Response Actions at a Tier I disposal site after a Tier I Permit ~~issued to~~obtained by such person has expired, unless and until such person obtains a Permit Extension in accordance with 310 CMR 40.07~~24~~20.
- (2) Content of Application. In addition to the requirements in 310 CMR 40.0703, an application for a Permit Extension shall include the following:
  - (a) a statement as to why the extension is sought; and
  - (b) each applicant's compliance history, as required by 310 CMR 40.0703(9)(b), since the effective date of his or her permit only; and
  - ~~(c) if applicable, an LSP Opinion regarding proposed or continuing response actions pursuant to 310 CMR 40.0703(2).~~

40.0707: Additional Application Submittal Requirement for ~~Tier I Major~~ Permit ~~Major~~ Modifications

(1) General.

~~(a)~~ An application for a Major Permit Modification shall be filed to:

~~4(a)~~ upgrade a Tier IC disposal site to Tier IA or Tier IB;

~~(b)2~~ upgrade a Tier IB disposal site to Tier IA;

~~(c) or~~ downgrade a Tier IC disposal site to a Tier II;

~~(d)~~ downgrade a Tier IB disposal site to a Tier IC or Tier II;

~~(e)~~ downgrade a Tier IA disposal site to a Tier IB, Tier IC or Tier II;

~~or~~

~~3(f)~~ request a modification of any terms or conditions in a Tier I Permit, except as provided by 310 CMR 40.07~~25~~20.

~~(b) A permittee may downgrade a Tier IA, Tier IB or Tier IC disposal site to Tier II, or downgrade a Tier IA disposal site to Tier IB or Tier IC, or a Tier IB disposal site to Tier IC. To do so, the permittee shall obtain a Major Permit Modification pursuant to 310 CMR 40.0707.~~

(2) No Tier I Permit shall be deemed modified unless and until the permittee(s) has filed an application for a Major Permit Modification and ~~the Department has such Modification has been~~ approved ~~the application in writing pursuant to 310 CMR 40.0720~~.

(3) Content of Application. In addition to the requirements in 310 CMR 40.0703, an application for a Major Permit Modification shall include the following:

(a) a description of the modification sought;

(b) ~~if the application is made to modify a Permit category or to reclassify a disposal site as Tier II,~~ an LSP Tier Classification Opinion prepared in accordance with 310 CMR 40.0510(3), ~~if the application is made to upgrade or downgrade the Permit category;~~

(c) ~~if the application is made to modify permit terms or conditions,~~ an LSP Opinion as to why the permit terms or conditions are no longer necessary or appropriate, including a report detailing any new or additional information to justify the modification(s) sought, if the application is to modify terms or conditions in a permit;

(d) each applicant's compliance history, as required by 310 CMR 40.0703(9)(b), since the effective date of his or her permit only; ~~and~~

~~(e) the LSP Opinion regarding proposed or continuing response actions pursuant to 310 CMR 40.0703(2); and~~

~~(f)~~ if the application was filed:

1. to upgrade the Tier I Permit Classification; or

2. to downgrade the Tier I Permit Classification to a Tier IB or a Tier IC;

3. a statement affirming that notice was submitted for publication in the Environmental Monitor as required by 310 CMR 40.0703(8)(~~dg~~), and a photocopy of such notice.



#### 40.0710: Incomplete Tier I Permit Applications

An application for a Tier I Permit shall not be deemed complete if ~~the Department determines that a Tier I Permit application the RP, PRP or Other Person who submitted the application (the applicant):~~

- (1) fails to ~~contain~~include all required information, as listed in 310 CMR 40.0703 through 40.0709, and all further information requested by the Department pursuant to 310 CMR 40.0703(11);
- (2) fails to demonstrate completion of the public notice requirements described in 310 CMR 40.0703(8);
- (3) fails to ~~contain~~include all information required by 310 CMR 40.0000;
- (4) fails to include the applicable fee established by 310 CMR 4.00; or
- (5) ~~fails to fill out the application~~is in correctly ~~filled out~~.

#### 40.0720: Approval Processing for Tier I Permit Applications, Major Modifications, Transfers or Extensions.

(1) General. 310 CMR 40.0720 through 40.0729, cited collectively as 310 CMR 40.0720, together with 310 CMR 4.04, define the ~~procedures and review periods for administrative completeness, technical, supplemental technical, and public comment review periods for approval processing~~process for Tier I Permit Applications or a Modification, Transfer or Extension of a Tier I Permit. These procedures and review periods apply to all Tier I Permit Applications except as provided for Permit Transfers in 310 CMR 40.0723.

(2) The Department shall consider the criteria in 310 CMR 40.0730(1) and 40.0731(1) and all other available information when reviewing a Tier I Permit Application or a Modification, Transfer or Extension submitted pursuant to 310 CMR 40.0700, and when making the following decisions:

- (a) to grant a Permit, Modification, Transfer or Extension;
- (b) to grant a Permit, Modification, Transfer or Extension with conditions pursuant to 310 CMR 40.0740(3)(n); or
- (c) to deny a Permit, Modification, Transfer or Extension.

(23) Commencement of Schedule. For purposes of 310 CMR 40.0720 and 310 CMR 4.04(2)(a), the computation of time periods shall commence on the day following the day a complete Tier I Permit Application, Modification, Transfer or Extension is received at the appropriate regional office of the Department or on the day following the day the applicable permit application fee is received, as described in 310 CMR 40.0008, whichever occurs later.

(4) A Tier I Permit or a Major Modification, Transfer or Extension of a Tier I Permit shall be presumed approved without conditions 45 days from the date the complete Application was received by the Department pursuant to



310 CMR 40.0720(3), unless prior to the end of the 45 day period, the Department provides to the applicant(s) one of the following:

- (a) a Decision to deny the applicant a Tier I Permit or a Major Modification, Transfer or Extension of a Tier I Permit, based upon the criteria in 310 CMR 40.0730 and 40.0731;
- (b) a Decision to grant the applicant a Tier I Permit or a Major Modification, Transfer or Extension of a Tier I Permit with conditions pursuant to 310 CMR 40.0740(3)(n), based upon the criteria in 310 CMR 40.0730; or
- (c) a Notice of Extended Review indicating that because of the nature and complexity of the review, based on the criteria set forth in 310 CMR 40.0730(1), the Department requires an additional 45 days from the date the Notice of Extended Review is issued by the Department to complete its review.

(5) If the Department issues the applicant(s) a Notice of Extended Review in accordance with 310 CMR 40.0720(34)(c), the Tier I Permit or a Major Modification, Transfer or Extension of a Tier I Permit shall be presumed approved without conditions 45 days from the date the Department issued the Notice of Extended Review, unless prior to the end of the 45 day period, the Department provides to the applicant(s) with one of the following:

- (a) a Decision to deny the applicant a Tier I Permit or a Major Modification, Transfer or Extension of a Tier I Permit, based upon the criteria in 310 CMR 40.0730 and 40.0731; or
- (b) a Decision to grant the applicant a Tier I Permit or a Major Modification, Transfer or Extension of a Tier I Permit with conditions pursuant to 310 CMR 40.0740(3)(n), based upon the criteria in 310 CMR 40.0730.

(6) Presumptive approval of a Tier I Permit, Major Modification, Transfer or Extension pursuant to 310 CMR 40.0720 means the RP, PRP or Other Person has approval to proceed with Response Actions in compliance with all applicable provisions of 310 CMR 40.0000. Such presumptive approval shall not be construed as approval by the Department of the scope or adequacy of plans or of the response actions as actually conducted, or as forgiveness of non-compliance with any provision of 310 CMR 40.0000.

(37) Extensions of Review Schedule by Agreement. The applicant and the Department may, by written agreement, extend any schedule for timely action or individual portion thereof for a Tier I permit application pursuant to 310 CMR 40.0720 or 310 CMR 4.00.

(8) Tier I Permit, Transfer, Extension or Major Modification Applications Pending as of June 27, 2003. Unless otherwise specified by the Department, Tier I Permit, Transfer, Extension or Major Modification applications pending approval as of June 27, 2003 shall be presumed approved without conditions 45 days from June 27, 2003 or 75 days from the date such application was submitted, whichever date is sooner.

(4) ~~Changes in Permit Category.~~

- ~~(a) The Department may determine that an applicant has filed a new application whenever additional information provided by such applicant during:~~
- ~~1. any Departmental review period in response to any request for additional information or any statement identifying deficiencies in the application or supporting materials, or in which new information becomes available; or~~
  - ~~2. any period allowed for public comment, results in a Departmental determination to upgrade the permit category.~~
- ~~(b) Upon making the determination that the applicant has filed a new application, the Department shall promptly notify the applicant in writing. The notice shall indicate the basis for the determination and summarize the provisions of 310 CMR 4.04(2)(c)2. relative to such determination. The determination that a new application has been filed shall not be grounds for a request for adjudicatory hearing; however, an applicant aggrieved by such a determination may seek review of the determination as an issue in any appeal of the permit decision.~~
- ~~(c) The effect on the permit review schedule and fee of such a Departmental determination shall proceed according to 310 CMR 4.04(2)(c)2..~~

~~40.0721: Administrative Completeness (AC) Review.~~

- ~~(1) General. The Department shall conduct an Administrative Completeness Review of a Tier I Permit application in accordance with 310 CMR 4.04(2)(b)1. and 310 CMR 40.0721. The purpose of the Administrative Completeness Review is to determine whether all required elements of the Tier I Permit application have been submitted by the applicant.~~
- ~~(2) Initial Administrative Completeness Review (AC-1):~~
- ~~(a) The AC-1 Review shall result in a written determination of administrative completeness or a statement of administrative deficiencies.~~
  - ~~(b) A determination of administrative completeness shall mean that the permit application may proceed to Technical Review.~~
  - ~~(c) A statement of administrative deficiencies shall end the AC-1 review period.~~
  - ~~(d) Except as agreed pursuant to 310 CMR 40.0720(3), the Department shall send a determination of administrative completeness or a statement of administrative deficiencies to the applicant in writing within 30 days of the date determined by reference to 310 CMR 40.0720(2). If the application is not complete pursuant to 310 CMR 40.0710, the Department shall identify the information necessary to complete the application in the statement of administrative deficiencies.~~
  - ~~(e) The Department may request additional information during the course of AC-1 Review.~~
  - ~~(f) An applicant shall respond within 15 days of the date of issuance of the Department's statement of administrative deficiencies by submitting the requested additional material to support the application.~~

~~(g) Failure by the applicant to submit such material within the specified time shall be deemed a withdrawal of the application; provided that, in such circumstances, the applicant shall not be entitled to any refund of the permit application fee, notwithstanding the provisions of 310 CMR 4.04(3)(d).~~

~~(3) Public Notice Period. Applicants shall provide public notice of the filing of a Tier I Permit application in accordance with 310 CMR 40.0703(8). The public notice period shall run concurrently with the AC review. Persons interested in reviewing and/or submitting comment on the Permit application shall inform the Department in writing of such interest during such public notice period. The Department will receive statements of interest for a period of 20 days from the date determined by reference to 310 CMR 40.0720(2).~~

~~(4) Second Administrative Completeness Review (AC-2).~~

~~(a) If the Department issues a statement of administrative deficiencies, the Department shall have an additional 30 days for a second Administrative Completeness Review, AC-2, beginning the day after receipt of material submitted by the applicant in response to the statement of administrative deficiencies issued in AC-1.~~

~~(b) The Department may request additional information during the course of AC-2 review.~~

~~(c) The AC-2 review shall result in a determination of administrative completeness or a denial of the permit application.~~

~~(d) A denial of the permit application shall be subject to appeal in accordance with 310 CMR 40.0770, provided that in any adjudicatory hearing the issues shall be limited to the question of whether or not the application submitted was administratively complete. If the applicant prevails in such proceeding, the Department shall begin the next step of its review pursuant to the schedule for timely action.~~

~~(5) Notifications Upon a Determination of Administrative Completeness. Upon a determination of administrative completeness, the Department shall notify in writing the Chief Municipal Officer and Board of Health of each community where the disposal site is located, and any other community(ies) that is likely to be affected by the disposal site, and any person who notified the Department of his or her interest in reviewing or submitting comment on the application in accordance with 310 CMR 40.0721(3).~~

~~(6) Effect of determination. A determination of administrative completeness shall not constitute any finding with respect to the technical suitability, adequacy or accuracy of the materials submitted, and shall be no bar to a request to amend, revise, replace, or supplement such materials based on technical suitability, adequacy or accuracy.~~

#### 40.0722: Technical Review of Tier I Permit Applications

~~(1) General. The Department shall conduct a Technical Review of a Tier I Permit application in accordance with 310 CMR 4.04(2)(b)2., 4.04(2)(b)3., and 310 CMR 40.0722. The purpose of the Technical Review is to review~~

~~the merits of the Tier I Permit application, the LSP Tier Classification Opinion, and the applicant's ability and willingness to carry out response actions in accordance with applicable requirements.~~

~~(2) Initial Technical Review (T-1):~~

~~(a) An initial Technical review shall result:~~

- ~~1. in a decision to grant or deny a permit;~~
- ~~2. in a proposed decision to grant or deny a permit;~~
- ~~3. in a determination that a disposal site does not require a permit;~~
- ~~or~~
- ~~4. in a statement identifying technical deficiencies in the application and supporting materials. The Department's decision to issue a statement identifying technical deficiencies shall not be deemed to give rise to any right to an adjudicatory hearing.~~

~~(b) Except as agreed pursuant to 310 CMR 40.0720(3), the Department shall have 75 days to complete its T-1 review from the date of the Department's determination of administrative completeness.~~

~~(c) The Department may request additional information during the course of T-1 review.~~

~~(d) A statement of technical deficiencies shall end the T-1 review period.~~

~~(e) An applicant shall respond within 30 days of the date of issuance of a statement of technical deficiencies by submitting any additional material to support the application and address deficiencies.~~

~~(f) If the Department has issued a statement of technical deficiencies, the applicant may within 30 days proceed on the record as it stands at the time by so notifying the Department in writing of such decision in a response pursuant to 310 CMR 40.0722(2)(e). An applicant so electing to proceed on the record may not in any manner amend, revise, replace or supplement the application and supporting materials. If the applicant so elects, the Department shall issue a decision to grant or deny the permit, or a Proposed Permit Decision pursuant to 310 CMR 40.0722(4), within 45 days of receipt of the applicable notice, subject to adjustment in schedule pursuant to 310 CMR 4.04(2)(d)2. or 4.04(2)(d)3.a..~~

~~(g) If the applicant fails to respond to a statement of technical deficiencies, the application shall be reviewed on the record.~~

~~(h) A decision to grant or deny a permit shall be subject to review in accordance with 310 CMR 40.0770.~~

~~(i) Initial Public Comment Period (PC-1):~~

~~1. If any person notifies the Department of his or her interest in reviewing or submitting comment on a Tier I Permit application in accordance with 310 CMR 40.0721(3), the Department shall conduct a public comment period (PC-1) of not less than 20 days which shall run concurrently with the T-1 review timeline.~~

~~2. If the Department receives significant public comment on the Permit application as a result of the PC-1 comment period, the Department shall:~~

- ~~a. allow the applicant 30 days to respond to such comments in writing; and/or~~
- ~~b. issue a statement of technical deficiencies which includes significant public comments to be addressed. The term~~

~~"significant public comment" means comment which would, on its face, appear to constitute grounds for the Department to deny or significantly modify a Proposed Permit. The Department's decision that comment would appear to constitute grounds for denial or significant modification of the proposed permit shall not be deemed to give rise to any right to an adjudicatory hearing.~~

~~(3) Supplemental Technical Review (T-2):~~

~~(a) The purpose of a supplemental technical review (T-2) is to allow the Department to review technical information submitted by the applicant in response to a statement of technical deficiencies issued in T-1.~~

~~(b) A T-2 technical review shall result:~~

- ~~1. in a decision to grant or deny a permit;~~
- ~~2. in a proposed decision to grant or deny the permit; or~~
- ~~3. a determination that a disposal site does not require a permit.~~

~~(c) Except as agreed pursuant to 310 CMR 40.0720(3), the Department shall have an additional 45 days for a T-2 review from the day after the receipt of material submitted by the applicant in response to a statement of technical deficiency.~~

~~(d) The Department may request more information at any time during the T-2 review.~~

~~(e) A decision to grant or deny a permit shall be subject to review in accordance with 310 CMR 40.0770.~~

~~(4) Proposed Permit Decisions:~~

~~(a) The Department may issue a Proposed Permit Decision if the Department intends to deny the permit based upon the criteria in 310 CMR 40.0730 and 40.0731.~~

~~(b) The Department shall issue a Proposed Permit Decision if, based upon the criteria in 310 CMR 40.0730, the Department intends to issue a permit:~~

- ~~1. with conditions pursuant to 310 CMR 40.0740(3)(e) or;~~
- ~~2. for a higher Tier I category than that stated in the LSP Tier Classification Opinion.~~

~~(c) If a T-1 or T-2 technical review results in a Proposed Permit Decision, the Department shall conduct a supplemental public comment period (PC-2) of not less than 20 days, which shall occur at the end of the T-1 or T-2, whichever is applicable, or begin on the date of publication of the legal notice pursuant to 310 CMR 40.0722(5)(a), whichever is later.~~

~~(5) Supplemental Public Comment Period (PC-2):~~

~~(a) The Department shall provide notice of the PC-2 public comment period in accordance with 310 CMR 40.0703(8). The public comment period of 20 days shall run from the date of publication of the legal notice.~~

~~(b) If the Department receives significant public comment on the Proposed Permit Decision, the applicant shall have an applicant review period of 30 days at the close of the PC-2 period to respond to such comments in writing to the Department. The applicant review period~~

~~shall end after 30 days or when the applicant submits his or her response to comments to the Department, whichever is earlier. If the applicant fails to respond to such comments, or if the applicant elects not to respond to such comments by notifying the Department of such decision, and thus ending the applicant review period, the application shall be reviewed on the basis of the available information.~~

~~(c) The Department's decision that comment would appear to constitute grounds for denial or significant modification of the proposed permit shall not be deemed to give rise to any right to an adjudicatory hearing.~~

~~(d) The Department may request additional information during the PC-2 public comment period.~~

~~(6) Preparation of Statement of Basis. The Department shall prepare a statement of basis whenever it issues a Proposed Permit Decision, and may prepare a statement of basis whenever it issues a Final Permit Decision.~~

~~(a) The statement of basis shall summarize the basis for the Proposed Permit Decision or Final Permit Decision, whichever is applicable;~~

~~(b) If the Department receives significant public comment during any public comment period, the statement of basis shall include a list of the names and addresses of the persons who submitted significant public comment and a summary of their comments; and~~

~~(c) If the Department decides to issue a permit with conditions in accordance with 310 CMR 40.0740(3)(e), the statement of basis shall include the basis for such conditions.~~

~~(7) Final Permit Review for Proposed Permit Decisions.~~

~~(a) The purpose of the Final Permit Review is to allow the Department time to develop a Final Permit Decision after the close of the PC-2 public comment period.~~

~~(b) In the absence of significant public comments, the Department shall have 30 days from the close of PC-2 to complete its Final Permit Review.~~

~~(c) If the Department receives significant public comments during PC-2, the Department shall have 60 days from the close of the Applicant Review period to complete its Final Permit Review.~~

~~(d) The Department may request additional information during Final Permit Review.~~

~~(e) The Final Permit Review shall result in a decision to grant or deny a permit.~~

#### ~~40.0723: Processing of Applications For Tier I Permit Transfers~~

~~(1) The Department shall conduct Administrative Completeness and Technical Reviews of Permit Transfer applications in accordance with 310 CMR 40.0720 through 40.0722, except as provided in 310 CMR 40.0723(2).~~

~~(2) Except as agreed pursuant to 310 CMR 40.0720(3), the Department shall complete its technical review of a Permit Transfer application as follows:~~

~~(a) the T-1 technical review period in 310 CMR 40.0722(2)(b) shall be 60 days; and~~

~~(b) the T-2 technical review period in 310 CMR 40.0722(3)(c) shall be 30 days.~~

~~(3) T-1, or if applicable, T-2, shall result either in a decision or a proposed decision to grant or deny a Permit Transfer. A decision to grant or deny a permit shall be subject to review in accordance with 310 CMR 40.0770.~~

#### 40.0724: Processing of Applications for Permit Extensions

~~(1) An application for a Permit Extension shall be made at least 90 days prior to the expiration of a permit. The conditions of a Tier I Permit shall continue in force under M.G.L. c. 21E beyond the original permit's expiration date if the permittee has made a timely application for extension.~~

~~(2) The Department shall conduct an Administrative Completeness and Technical Review of Permit Extension applications in accordance with 310 CMR 40.0720 through 40.0722.~~

~~(3) T-1, or if applicable, T-2, shall result either in a decision or a proposed decision to grant or deny a Permit Extension. A decision to grant or deny a permit shall be subject to review in accordance with 310 CMR 40.0770.~~

#### 40.0725: Processing of Minor Permit Modifications

~~(1) General. An RP, PRP or Other Person The Department may shall notify the Department in writing of any of the following changes after a Permit application has been submitted and prior to submitting a Class A or B Response Action Outcome or Downgradient Property Status for the disposal site where response actions are being conducted under the Permit: modify a permit at the request of a permittee or with the consent of the permittee to correct or modify permit terms. A modification shall be considered minor if it is to:~~

~~(a) correct typographical errors;~~

~~(ba) notify the Department of the permittee's change(s) in permittee's name or address;~~

~~(cb) notify the Department if the permittee(s) changes in the LSP-of-Record;~~

~~(dc) notify the Department if the permittees change in the Primary Representative;~~

~~(ed) correct any omissions which that do not materially affect the nature or complexity of the permitted response action;~~

~~(fe) include the addition of one or more additional RPs, PRPs, or Other Persons as permittees; and~~

~~(gf) make other changes of similar scope to the permit.~~

~~(2) A request for Notification of a Minor Permit Modification shall include the following:~~

~~(a) a completed transmittal form using the form established by the Department for such purposes;~~

~~(b) a description of the modification sought;~~



(c) an Opinion of a Licensed Site Professional stating the reasons for the modification if the modification is related to any information for which such LSP has submitted an Opinion; ~~and~~

(d) the certification required by 310 CMR 40.0009; and

(e) if the application is to add one or more permittees, the following shall be included:

1. the certification required by 310 CMR 40.0009 from the new applicant(s);
2. written consent by the new applicant(s) to the terms and conditions of the Tier I Permit;
3. the certification required by 310 CMR 40.0703(9)(a) by the new applicant(s);
4. the compliance history of the new applicant, as required by 310 CMR 40.0703(9)(b); and
5. written consent from the existing permittee(s) or the Primary Representative, whichever is applicable, to the new applicant(s) joining the Tier I Permit.

(3) Minor permit modifications shall not be subject to processing requirements under 310 CMR 40.0720 ~~through 40.0722~~, or 310 CMR 4.00.

~~(4) Within 60 days of receipt of a request to make a Minor Permit Modification, the Department shall respond in writing indicating whether the modification is approved or denied. If written notice is not issued by the Department within 60 days time, the Minor Modification requested shall be deemed approved.~~

~~(5) Within 30 days of issuance of the Department's denial of a minor permit modification, the permittee may recommend an alternative or a corrected Minor Permit Modification. If the permittee fails to respond to a written denial issued pursuant to 310 CMR 40.0725(4), the Department shall deem the request for a Minor Modification withdrawn.~~

40.0730: ~~Department Review of Issuance of Tier I Permits Applications, Major Modifications, Transfers, or Extensions~~

(1) In reviewing a Tier I Permit ~~a~~Application ~~or a Modification, Transfer, or Extension of a Tier I Permit~~, the Department shall consider the following:

- (a) the existence, source, nature, and extent of a disposal site;
- (b) the nature and extent of danger to health, safety, public welfare and the environment posed by the disposal site;
- (c) the magnitude and complexity of the actions necessary to assess, contain, or remove the oil and/or hazardous material in question;
- (d) the extent to which there are legally enforceable standardized methods and criteria available for response actions;
- (e) the extent to which the Department is persuaded that the applicant has the ability and willingness to perform necessary response actions;
- (f) the applicant's compliance history with Departmental and other applicable regulations ~~which~~that is material to the disposal site;
- (g) the extent to which Departmental oversight is necessary to ensure compliance with M.G.L. c. 21E and 310 CMR 40.0000;

- (h) any permit conditions developed pursuant to 310 CMR 40.0740(3)(~~en~~) to which the applicant has consented; and
- (i) any other factor the Department deems relevant to the decision.

(2) The Department shall consider the criteria in 310 CMR 40.0730(1) when reclassifying a Tier Classified disposal site pursuant to 310 CMR 40.0583.

~~(2) The Department shall consider the criteria in 310 CMR 40.0730(1) and 40.0731(1) and all other available information when reviewing a Tier I permit application submitted pursuant to 310 CMR 40.0700, and when making the following decisions:~~

- ~~(a) to grant or deny a permit;~~
- ~~(b) to issue a proposed permit decision to grant or deny a permit; or~~
- ~~(c) a determination that a disposal site for which a permit application has been filed does not require a permit.~~

40.0731: Criteria For ~~Permit~~ Denials of Tier I Permits, Major Modifications, Transfers or Extensions

(1) The Department may deny a Tier I ~~p~~Permit, Modification, Transfer or Extension application if it determines that:

- (a) the applicant has submitted information in the application for a Tier I Permit, Modification, Transfer or Extension application which that he or she knew or reasonably should have known was false or misleading;
- (b) the application is not completed by an applicable deadline;
- (c) the Department is not persuaded that the applicant is able or willing to perform necessary response actions in accordance with M.G.L. c. 21E, 310 CMR 40.0000 and other applicable laws;
- (d) the Department is not persuaded that the applicant can properly conduct response actions pursuant to the criteria in 310 CMR 40.0730, after evaluation of information in the Tier Classification Submittal, the Permit application for a Tier I Permit, Modification, Transfer or Extension, and other information material to the disposal site which is available to the Department;
- (e) a valid Tier I Permit is in effect for such disposal site or for a portion of such disposal site; or
- (f) the Department intends to undertake or arrange for the performance of necessary response actions at the disposal site.

40.0740: ~~Permit~~ Conditions Applicable to all Tier I Permits

(1) A permittee performing a response action pursuant to a Tier I Permit, Modification, Transfer or Extension shall comply at all times with M.G.L. c. 21E, 310 CMR 40.0000, the terms and conditions of the permit and any other applicable federal, state or local laws.

(2) In every proceeding, the burden shall be on the permittee to demonstrate compliance with the terms and conditions of a ~~p~~Tier I Permit, Transfer, Modification or Extension at all times.

(3) All Tier I ~~P~~permits, Modifications, Transfers or Extensions shall be conditioned on at least the following:

- ~~(a) compliance by the RP, PRP, or Other Person undertaking response actions at a disposal site under a Tier I Permit, Modification, Transfer or Extension with the applicable submittal and response action deadlines set forth at 310 CMR 40.0000; submittal of a Class A, B or C Response Action Outcome Statement within five years of the effective date of the permit, unless otherwise provided in the permit;~~
- ~~(b) submittal of a copy of the signed and completed Permit Acceptance Statement required by 310 CMR 40.0750(2) to the Chief Municipal Officer(s) and the local board(s) of health for the community(ies) where the disposal site is located, and to any member of the public identified in the Department's Statement of Basis, if applicable;~~
- ~~(eb)~~ notification in writing to the Department:
1. as required in 310 CMR 40.0500;
  2. upon gaining knowledge of any technical, financial or legal inability to perform any necessary response action, in accordance with 310 CMR 40.0172;
  3. upon a decision by a permittee who is performing response actions as an Other Person to not proceed as required by the permit pursuant to 310 CMR 40.0170(10); and
  4. of any change in the LSP-of-Record for the disposal site no later than ten days after the effective date of such change through the filing of a Minor Permit Modification by the permittee in accordance with 310 CMR 40.0725;
- ~~(dc)~~ compliance with:
1. all applicable submittal requirements, including but not limited to, scopes of work, Status Reports, Completion Statements, Phase Reports, and RAOs;
  2. all requirements for record keeping and document retention including, but not limited to, 310 CMR 40.0014, 310 CMR 40.0022 and 310 CMR 40.0023;
  3. the Notification Regulations, 310 CMR 40.0300, in the event of discovery of a new release located at the disposal site, threat of release or Imminent Hazard;
  4. the management procedures for excavated soils and wastes and requirements for remedial air emissions set forth in 310 CMR 40.0030 and 310 CMR 40.0040; and
  5. all public involvement activities required by 310 CMR 40.1400 through 40.1406;
- ~~(ed)~~ inclusion of the Release Tracking Number(s) and the permit number on documents submitted to the Department with respect to the disposal site;
- ~~(fe)~~ certification of documents submitted to the Department as required by 310 CMR 40.0009;
- ~~(gf)~~ evaluation of the need to perform Immediate Response Actions in accordance with 310 CMR 40.0400 as new or additional information about the disposal site is obtained;
- ~~(hg)~~ modification or cessation of any response action as necessary to maintain compliance with any permit condition or to prevent an actual or potential threat to health, safety, public welfare, or the environment;
- ~~(ih)~~ notification, orally or in writing, to the Department within 72 hours of obtaining knowledge of the need to modify or cease any response

actions for the reasons in 310 CMR 40.0740(3)(hg); provided that any such oral notification shall be confirmed by the permittee in writing within 60 days of such oral notice and any written notice shall include a Status Report prepared by an LSP; and timely remediation of any adverse impacts to health, safety, public welfare or the environment that result from the performance of response actions;

(ji) at disposal sites where groundwater investigation is necessary, delineation of the vertical and horizontal extent of contamination, identification and confirmation of groundwater flow directions, identification of groundwater migration pathways including, but not limited to, the identification of possible partitioning of dissolved volatile organic compounds at the water table interface which may lead to vapor transport into subsurface structures, homes or other occupied or unoccupied buildings, and monitoring of groundwater wells, discharges and/or other monitoring points in a manner which provides for the timely development of representative information about conditions and changes in conditions at the disposal site;

(kj) acquisition of all required federal, state and local permits;

(lk) proper operation and maintenance of all treatment, storage, abatement or control systems and of all equipment required to continue or complete response actions;

(ml) authorization for personnel and authorized agents of the Department to enter, at reasonable times and upon the presentation of credentials, any premises owned or controlled by the permittee for the purpose of investigating, sampling, or inspecting any records, conditions, equipment, practice or property relating to response actions at the disposal site, or protecting health, safety, public welfare, or the environment;

(nm) notification upon a change of the Primary Representative as required by 310 CMR 40.0703(7); and

(on) any other conditions necessary to ensure the appropriate level of Departmental oversight of response actions.

(4) A Tier I Permit does not grant any property rights or exclusive privileges, nor does it authorize any injury to private property or invasion of property rights.

(5) A Tier I Permit Extension obtained under 310 CMR 40.0706 and 310 CMR 40.0720 does not forgive an RP's, PRP's or Other Person's noncompliance with any provisions of 310 CMR 40.0000, including but not limited to, noncompliance that resulted from the late submittal or failure to submit an IRA Plan, Status Report, Phase I Report, Tier Classification, Phase II Report, Phase III Remedial Action Plan, Phase IV Remedy Implementation Plan, and/or failure to achieve a Response Action Outcome. A Tier I Permit Extension means the RP, PRP or Other Person has approval to continue with response actions in compliance with all applicable provisions of 310 CMR 40.0000. Such Extension shall not be construed as approval by the Department of the scope or adequacy of plans or of the response actions as actually conducted.

40.0750: Tier I Permit Effective Date

(1) A Tier I Permit shall become effective ~~21 days after the date of issuance by the Department and the receipt by the Department of the signed Permit Acceptance Statement, whichever is later, unless a request for an adjudicatory hearing is made pursuant to 310 CMR 40.0770.~~

(a) 45 days from the date the complete Tier I Permit application is received by the Department, if the Permit is presumptively approved without conditions pursuant to 310 CMR 40.0720(4);

(b) on the date the Department issues its written approval of the Tier I Permit, if approved with conditions;

(c) 45 days from the date the Department issues a Notice of Extended Review, if the Department issues the applicant(s) a Notice of Extended Review in accordance with 310 CMR 40.0720(4)(c) and the Permit is presumptively approved without conditions pursuant to 310 CMR 40.0720(5); or

(d) on the date the Department issues its written approval of the Permit, if the applicant and the Department by written agreement extend any schedule for timely action or individual portion thereof for the review of a Tier I Permit application pursuant to 310 CMR 40.0720(6) or 310 CMR 4.00.

~~(2) To accept a Tier I Permit, the applicant(s) shall sign and submit a completed Permit Acceptance Statement to the Department within 30 days of the date of issuance of a permit decision, unless a request for an adjudicatory hearing is made pursuant to 310 CMR 40.0770.~~

#### 40.0751: Duration of Tier I Permits

(1) A Tier I Permit shall be effective for five years from the effective date of the initial Permit, unless otherwise established by the Department.

(2) Any modification or transfer of a permit shall be effective for the remaining duration of the permit being transferred or modified.

(3) A Tier I Permit Extension shall be effective for ~~two years from the effective date, unless otherwise established by the Department.~~ a period of two years beyond the expiration date of the initial Tier I Permit or most recent Tier I Permit Extension, unless otherwise specified by the Department.

#### 40.0760: Tier I Permit Suspension and Revocation

(1) The Department may suspend or revoke any permit for cause including, but not limited to, the following:

(a) any violation of M.G.L. c. 21E, 310 CMR 40.0000, or permit condition, or other applicable law or regulation;

(b) the submittal of false or misleading information by the permittee; or

(c) for nonpayment of annual compliance assurance fees required pursuant to 310 CMR 4.00.

(2) Prior to the suspension or revocation of a Tier I permit for cause, the Department shall issue a notice of intent to suspend or revoke a permit which describes the basis for the proposed suspension or revocation and informs the person to whom it is issued of his or her right to request an adjudicatory hearing pursuant to M.G.L. c. 30A.

(3) Notwithstanding 310 CMR 40.0760(2), suspension or revocation of a permit because of nonpayment of annual compliance assurance fees shall be processed in accordance with 310 CMR 4.03(7).

#### 40.0770: Right to Request An Adjudicatory Hearing

(1) ~~Except as provided by 310 CMR 40.0770(2), a~~Any person who is aggrieved by a decision of the Department with respect to any Tier I Permit application may request an adjudicatory hearing before the Department in accordance with 310 CMR 40.0050 and 40.0770(3) if:

- (a) the Department issues a permit for a category higher than that stated in the LSP Tier Classification Opinion; or
- (b) the Department denies the applicant a permit, unless the Department notifies the applicant in the permit decision that the Department intends to undertake or arrange for the performance of necessary response actions at the disposal site; or
- (c) the Department imposes conditions pursuant to 310 CMR 40.0740(3)(~~en~~) without the applicant's consent.

(2) A person shall be deemed to have waived his or her right to an adjudicatory hearing ~~if he or she failed to raise~~~~unless~~ the matter ~~of his or her complaint~~~~ed of was raised~~ at the appropriate point during the processing of the application in accordance with 310 CMR 40.0720, provided that a matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to have been raised during the processing of the application.

(3) A request for an adjudicatory hearing pursuant to 310 CMR 40.0770 shall:

- (a) comply with 310 CMR 40.0050 and 310 CMR 1.00;
- (b) include a copy of the permit decision, ~~including, but not limited to, the statement of basis~~; and
- (c) state the reason(s) the permit decision does not comply with 310 CMR 40.0000;

(4) The adjudicatory hearing shall be limited to the issue of whether the Department's permit decision is in accordance with the criteria set forth in 310 CMR 40.0730 or 310 CMR 40.0731.

(5) When a request for an adjudicatory hearing is made following receipt of a notice of intent to suspend or revoke a Tier I Permit for cause, allegations made at the adjudicatory hearing shall be limited to whether the Department has cause to suspend or revoke the permit.

## **REVISIONS TO OTHER MCP SUBPARTS THAT CORRESPOND WITH OR SUPPORT PERMIT REDESIGN REVISIONS**

### **40.0050: Appeals of Orders and Permits**

...

(2) Each request for a hearing must be sent to the Docket Clerk of the Department by certified mail or hand-delivered within 21 days of the date of issuance of the decision being appealed. A copy of the request shall be sent by certified mail or hand delivered simultaneously to:

- (a) the Chief Municipal Officer for the municipality where the disposal site is located;
- (b) the regional office of the Department that issued the decision or order; and
- (c) where the person aggrieved by a decision is a Permit Applicant who is appealing a permit decision, pursuant to 310 CMR 40.0770, ~~is appealing a permit decision~~, such person shall also simultaneously send, by certified mail or hand delivery, a copy of the request for an adjudicatory hearing to each person ~~identified in the Department's Statement of Basis as a person~~ who provided public comment.

(8) The following determinations shall not be subject to an adjudicatory hearing:

- (g) a decision to issue a Tier I Permit pursuant to 310 CMR 40.0700730-in a category lower than that recommended in the permit application;

### **40.0420: Requirements, Approvals, and Time Lines For Conducting Immediate Response Actions**

(1) Immediate Response Actions shall be taken by RPs, and may be taken by PRPs or Other Persons, in response to all releases and threats of release described in 310 CMR 40.0412.

...

(9) All written Immediate Response Action Plans submitted to the Department shall be approved, conditionally approved, or denied by the Department in writing within 21 days of receipt. ~~Except at Tier IA disposal sites, a~~Approval of such plan shall be presumed if the Department does not issue a written approval or denial of said plan within 21 days of receipt. Immediate Response Actions that had previously been orally approved by the Department shall continue during this review period.



(10) In approving an Immediate Response Action Plan, the Department may specify conditions of approval, including, but not limited to:

- (a) the role of the Department in overseeing or conducting various elements of the Immediate Response Action;
- (b) Interim Deadlines for one or more elements of the Immediate Response Action; or
- (c) submittal requirements for one or more elements of the Immediate Response Action.

(11) RPs, PRPs and Other Persons conducting Immediate Response Actions shall do so in conformance with all conditions and deadlines of any oral or written approval granted by the Department pursuant to 310 CMR 40.0420.

(12) Approval from the Department shall not be required to conduct or initiate Immediate Response Actions that consist solely of the construction of a fence and/or the posting of signs, provided the Department is informed of such actions in the next required response action submittal.

(13) Presumptive approval of an Immediate Response Action Plan pursuant to 310 CMR 40.0420(9) means the RP, PRP or Other Person has approval to proceed with Immediate Response Actions in compliance with all applicable provisions of 310 CMR 40.0000. Such presumptive approval shall not be construed as approval by the Department of the scope or adequacy of plans or of the response actions as actually conducted, or as forgiveness of non-compliance with any provision of 310 CMR 40.0000.

## SUBPART H: COMPREHENSIVE RESPONSE ACTIONS

### 40.0810: General Provisions for Comprehensive Response Actions

(1) Comprehensive Response Actions shall be performed in phases. The phases of Comprehensive Response Actions consist of:

- (a) Phase II - Comprehensive Site Assessment;
- (b) Phase III - Identification and Selection of Comprehensive Remedial Action Alternatives;
- (c) Phase IV - Implementation of the Selected Remedial Action Alternative; and
- (d) Phase V - Operation, Maintenance and/or Monitoring

(2) The results of each phase of Comprehensive Response Actions shall be documented in one or more reports, and submitted to the Department in a manner specified in 310 CMR 40.0800 and within the applicable deadlines specified in 310 CMR 40.0550 and 40.0560. Where appropriate, Comprehensive Response Action reports may be combined and submitted to the Department simultaneously.

(3) Each phase of Comprehensive Response Actions shall build upon the results of previous work, continuing until a Response Action Outcome as described in 310 CMR 40.1000 is reached for the disposal site.

(4) RPs, PRPs and Other Persons conducting Comprehensive Response Actions at disposal sites shall comply with all applicable provisions of 310 CMR 40.0800 and this Contingency Plan.

(5) RPs, PRPs and Other Persons conducting Comprehensive Response Actions shall engage or employ the services of a Licensed Site Professional.

(6) The scope and level of detail of response actions taken under 310 CMR 40.0800 shall be commensurate with the nature and complexity of the specific disposal site. The investigation process described in 310 CMR 40.0800 is intended to allow for varying levels of effort from disposal site to disposal site to avoid the collection of unnecessary information and unwarranted steps that could delay remedial actions. In all cases, the scope and level of detail of response actions taken under 310 CMR 40.0800 shall be sufficient to ensure that the applicable requirements and performance standards of these regulations are met, and that the response actions are conducted in a manner consistent with the Response Action Performance Standard as described in 310 CMR 40.0191.

(7) Technical justification, as described in 310 CMR 40.0193, may be provided to limit or forego one or more of the assessment or evaluation elements of 310 CMR 40.0800. Technical justification may not be used to forego procedural requirements, such as the submission of reports, notices or documents required as part of Comprehensive Response Actions under 310 CMR 40.0800. When technical justification is used to forego or limit an assessment or evaluation element, a description of the site-specific conditions and characteristics ~~which~~that make the requirement unwarranted and any documentation necessary to support any such justification shall be provided in the applicable submittal to the Department.

(8) If at any time during the conduct of response actions under 310 CMR 40.0800 an Imminent Hazard, sudden release, or other time-critical release or site condition is identified at a disposal site, as described in 310 CMR 40.0412, Immediate Response Actions shall be performed as set forth in 310 CMR 40.0400.

(9) Comprehensive Response Actions shall be conducted in a manner protective of health, safety, public welfare, and the environment, and in accordance with the Health and Safety provisions of 310 CMR 40.0018.

(10) Nothing in 310 CMR 40.0800 shall limit the ability of the Department to initiate, oversee, or order the performance of any response action deemed

necessary by the Department to protect health, safety, public welfare, or the environment or impose additional requirements which are consistent with the purposes on M.G.L. c. 21E or 310 CMR 40.0000.

(11) Notwithstanding any provision to the contrary, the Department may at any time require an RP, PRP or Other Person undertaking Comprehensive Response Actions pursuant to 310 CMR 40.0800 to obtain prior Departmental approval of one or more of the response actions or submittals required pursuant to 310 CMR 40.0800. The Department may require such prior approval for submittals or response actions as they relate to the entire disposal site or to some portion thereof.

#### 40.0834: Phase II Scope of Work

...

~~(3) The Department shall approve all Phase II Scopes of Work prior to the initiation or continuation of Phase II Comprehensive Site Assessment activities at disposal sites that have been classified and permitted as Tier IA under the provisions of 310 CMR 40.0500 and 40.0700, respectively. In these cases, the Department may specify or require additional detail within the Scope of Work and/or interim Comprehensive Site Assessment submittals.~~

#### 40.0871: General Provisions

(1) Phase IV contains requirements for the design, construction, and implementation of the Comprehensive Remedial Action alternative selected as a result of the Phase III evaluation under 310 CMR 40.0850.

(2) Phase IV activities shall include, without limitation, the following:

- (a) preparation of a Remedy Implementation Plan (RIP) as set forth in 310 CMR 40.0874;
- (b) documentation of the construction of the Comprehensive Remedial Action as described in 310 CMR 40.0875; and
- (c) implementation and final inspection of the Comprehensive Remedial Action.

(3) Where appropriate, reports and plans prepared required in Phase IV may be combined.

~~(4) RPs, PRPs and Other Persons conducting response actions at Tier IA disposal sites shall obtain Departmental approval of the Phase IV reports and plans and shall not commence construction or operation of the Comprehensive Remedial Action at Tier IA disposal sites unless and until the RIP has been approved by the Department.~~

(54) RPs, PRPs and Other Persons conducting Phase IV activities shall ensure that persons with the appropriate level of training, supervision and

applicable licenses or certifications are engaged in the design, construction, operation and maintenance of the Comprehensive Remedial Action.

(65) All federal, state and local permits, licenses or approvals and any agreements necessary for construction and operation of the Comprehensive Remedial Action shall be secured as early in Phase IV as possible in order to avoid delays in implementing the remedial action.

#### 40.1072: Process for Applying for a Grant of Environmental Restriction

(5) Processing a Grant of Environmental Restriction Application. For purposes of 310 CMR 4.10(10)(g), the computation of time periods shall commence on the day following the day a Grant of Environmental Restriction application is received at the appropriate Department office or on the day following the day the Grant of Environmental Restriction application fee is received, whichever occurs later.

(a) The applicant and the Department may, by written agreement, extend any schedule for timely action or individual portion thereof for a Grant of Environmental Restriction application pursuant to 310 CMR 4.00 and 310 CMR 40.1072.

(b) Administrative Completeness Review. The Department shall conduct an Administrative Completeness Review of a Grant of Environmental Restriction Application in accordance with 310 CMR 4.00 and 310 CMR 40.1072. The Administrative Completeness Review shall determine whether all required elements of the application have been submitted by the applicant.

1. Initial Administrative Completeness Review (AC-1). The initial AC-1 review shall comply with the following requirements: ~~established in 310 CMR 40.0721(2)(a) through (g).~~

(a) The AC-1 Review shall result in a written determination of administrative completeness or a statement of administrative deficiencies.

(b) A determination of administrative completeness shall mean that the permit application may proceed to Technical Review.

(c) A statement of administrative deficiencies shall end the AC-1 review period.

(d) The Department shall send a determination of administrative completeness or a statement of administrative deficiencies to the applicant in writing within 31 days of the date a Grant of Environmental Restriction application is received at the appropriate Department office or on the day following the day the Grant of Environmental Restriction application fee is received, whichever occurs later. If the application is not complete, the Department shall identify the information necessary to complete the application in the statement of administrative deficiencies.

2. Second Administrative Completeness Review (AC-2). If the Department issues a statement of administrative deficiencies, a second Administrative Completeness Review, AC-2, shall be conducted upon submittal of additional information by the applicant. Such AC-2 review shall be conducted in accordance with the following requirements: ~~established in 310 CMR 40.0721(4)(a) through (d).~~

(a) If the Department issues a statement of administrative deficiencies, the Department shall have an additional 30 days for a second Administrative Completeness Review, AC-2, beginning the day after receipt of material submitted by the applicant in response to the statement of administrative deficiencies issued in AC-1.

(b) The Department may request additional information during the course of AC-2 review.

(c) The AC-2 review shall result in a determination of administrative completeness or a denial of the permit application.

(d) A denial of the permit application shall be subject to appeal in accordance with 310 CMR 40.0050, provided that in any adjudicatory hearing the issues shall be limited to the question of whether or not the application submitted was administratively complete. If the applicant prevails in such proceeding, the Department shall begin the next step of its review pursuant to the schedule for timely action.

3. Effect of Determination. A determination of administrative completeness shall not constitute any finding with respect to the technical suitability, adequacy or accuracy of the materials submitted, and shall be no bar to a request to amend, revise, replace, or supplement such materials based on technical suitability, adequacy or accuracy.

(c) Technical Review of Grant of Environmental Restriction Applications. The Department shall conduct a Technical Review of each Grant of Environmental Restriction application to ensure that it conforms to the requirements established herein for such instruments. This review shall ensure that:

1. the instrument provides adequate and appropriate identification of property subject to the Grant of Environmental Restriction;
2. the person granting the Grant of Environmental Restriction is the owner of record;
3. all prior interests in the Restricted Area have been subordinated; and
4. the activities to be restricted, permitted, performed, and conditioned are clearly specified.

(d) Procedures for Initial Technical Review (T-1).

1. An Initial Technical Review shall result in a decision to approve the Grant of Environmental Restriction, or in a statement of technical deficiencies in the application and supporting materials. The

Department's decision to issue a statement of deficiencies shall not be deemed to give rise to any right to an adjudicatory hearing.

1. An initial T-1 review shall be conducted in accordance with the following requirements: ~~established in 310 CMR 40.0722(2)(e) through (e).~~

(a) The Department may request additional information during the course of T-1 review.

(b) A statement of technical deficiencies shall end the T-1 review period.

(c) An applicant shall respond within 30 days of the date of issuance of a statement of technical deficiencies by submitting any additional material to support the application and address deficiencies.

3. If the applicant fails to respond to a statement of technical deficiencies, the application shall be reviewed on the record.

4. As established in 310 CMR 4.10(10)(g), and except as agreed pursuant to 310 CMR 40.1072(5)(a), the Department shall have 60 days to complete its T-1 review from the date of the Department's determination of administrative completeness.

(e) Supplemental Technical Review (T-2).

1. The purpose of a supplemental technical review (T-2) is to allow the Department to review technical information submitted by the applicant in response to a statement of technical deficiencies issued in T-1.

2. A T-2 review shall result in a decision to approve or disapprove a Grant of Environmental Restriction.

3. Except as agreed pursuant to 310 CMR 40.1072(5)(a), the Department shall have an additional 45 days for a T-2 review from the day after the receipt of material submitted by the applicant in response to a statement of technical deficiency.

4. The Department may request more information at any time during the T-2 review.

#### 40.1066: Effect of Response Action Outcomes on Fees

(1) Except where response actions are being conducted in accordance with the provisions of 310 CMR 40.0581(1) or 310 CMR 40.0582(1), Upon receipt of a Class C Response Action Outcome Statement filed in accordance with 310 CMR 40.1000 ~~which indicates that Active Operation and Maintenance of the remedial action pursuant to 310 CMR 40.0896 is required,~~ the Department shall suspend the further assessment of Tier I or Tier II Annual Compliance Assurance Fees, whichever are applicable, and shall assess a Post-RAO Class C ~~Active Operation and Maintenance~~ Annual Compliance Assurance Fee pursuant to 310 CMR 4.03.

(2) Upon receipt of a Class A ~~or Class C~~ Response Action Outcome Statement filed in accordance with 310 CMR 40.1000 which indicates that

Active Operation and Maintenance of ~~the~~a remedial action is not necessary or no longer necessary to ensure the integrity of the RAO, the Department shall suspend the further assessment of Tier I or Tier II Annual Compliance Assurance Fees, or Phase V ~~Active~~ Operation, ~~and~~ Maintenance and/or Monitoring Annual Compliance Assurance Fees, ~~or Post-RAO Class C Active Operation and Maintenance Annual Compliance Assurance Fees,~~ whichever ~~are~~is applicable; provided, however, that payment of such fees shall be required for the billable year in which the Response Action Outcome is provided to the Department.

(3) Upon receipt of a Class B Response Action Outcome Statement filed in accordance with 310 CMR 40.1000, the Department shall suspend the further assessment of Tier I or Tier II Annual Compliance Assurance Fees, whichever ~~is~~are applicable.